94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 94–
2d Session } { 1489 Part 1

OIL POLLUTION LIABILITY

SEPTEMBER 9, 1976.—Ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 14862, which on July 26, 1976, was referred jointly to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 14862) to provide a comprehensive system of liability and compensation for oilspill damage and removal costs, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act of 1976".

TITLE I—DOMESTIC OIL POLLUTION LIABILITY, COMPENSATION, AND FUND

DEFINITIONS

SEC. 101. For the purposes of this title, the term—

(a) "Secretary" means the Secretary of Transportation;

(b) "fund" means the fund established by section 102;

(c) "person" means an individual, firm, corporation, association, or partnership;

(d) "incident" means any occurrence or series of occurrences, involving one or more vessels, facilities, or any combination thereof, which causes, or poses an imminent threat of, oil pollution;

(e) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water;

(f) "public vessel" means a vessel which—

(1) is owned, or chartered by demise, and operated by (A) the United States, (B) a State or subdivision thereof, or (C) a foreign government, and

57-006

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(2) is not engaged in commercial service;

(g) "ship" means any vessel carrying oil in bulk as cargo;

(h) "facility" means a structure, or group of structures (other than a vessel or vessels), used for the purpose of transporting, producing, processing, storing, transferring, or handling oil;

(i) "onshore facility" means any facility, other than an offshore facility, located in, on, or under any land within the United States;

(j) "offshore facility" means any facility located in, on, or under the navigable waters, or if the facility is subject to the jurisdiction of the United States, the high seas;

(k) "terminal" means a permanently situated facility, located within the territorial limits of the United States and not owned by any agency of the Federal Government, which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility, onshore pipeline, or a pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act;

(l) "refinery" means a terminal which receives crude oil for the purpose of refinement;

(m) "oil pollution" means the presence of oil, either in an unlawful quantity or having been discharged at an unlawful rate—

(1) in or on the navigable waters or their connecting or tributary waters, or on the lands immediately adjacent thereto;

(2) in or on the high seas water areas where the United States has sovereign rights over natural resources in or under such waters; or

(3) in or on the territorial sea, or adjacent shoreline, of a foreign country where damages are recoverable by a foreign claimant under this title;

(n) "navigable waters" means those waters of the United States (including the territorial sea) the general character of which is navigable and which, either by themselves or by uniting with other waters, form a continuous waterway on which vessels may navigate or travel between two or more States or to or from any foreign nation;

(o) "United States claimant" means any resident of the United States, the Government of the United States or agency thereof, or the government of a State or political subdivision thereof, who asserts a claim;

(p) "foreign claimant" means any resident of a foreign country, or the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(q) "United States" and "State" include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession over which the United States has jurisdiction;

(r) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(s) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(t) "person in charge" means the individual immediately responsible for the operations of a vessel or facility;

(u) "claim" means a demand in writing for a sum certain;

(v) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(w) "owner" means any person holding title to, or, in the absence of title, any other indicia of ownership of a vessel or facility, but does not include a person having only a security interest in, or security title to, a vessel or facility, under a contract of conditional sale, an equipment trust, a chattel or corporate mortgage, a lease which is the functional equivalent of an extension of credit, or any similar instrument;

(x) "operator" means—

(1) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel, or

(2) in the case of a facility, any person, except the owner, responsible for the operation of the facility by agreement with the owner;

(y) "property" means littoral or riparian property, including vessels;

(z) "removal costs" means—

(1) costs incurred under subsections (c), (d), and (l) of section 311 of the Federal Water Pollution Control Act, as amended by this Act, section 5 of the Intervention on High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, as amended by this Act; and

(2) cleanup costs, other than the costs described in clause (1); and

(aa) "guarantor" means the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

SEC. 102. (a) There is hereby established in the Treasury of the United States a fund, not to exceed $200,000,000.

(b) The fund shall be constituted from—

(1) all fees collected pursuant to subsection (d);

(2) all moneys recovered under section 108;

(3) all other moneys recovered or collected on behalf of the fund, under this Act; and

(4) all moneys received as payment for civil or criminal penalties or fines assessed or adjudged under section 7 of the Oil Pollution Act of 1961, as amended, under paragraph (5) or paragraph (6) of subsection (b) of section 311 of the Federal Water Pollution Control Act, as amended, respecting discharges of oil, under section 12 of the Intervention on the High Seas Act, under section 16 or section 18 of the Deepwater Port Act of 1974, as amended, or under this Act.

(c) In addition to the settlement of claims under section 107, the fund shall be immediately available for the removal costs described in section 101(z)(1), and the Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the fund for such purposes.

(d)(1) The Secretary of the Treasury shall collect from the owners of refineries receiving crude oil, and from the owners of terminals receiving any oil for export or entry into the United States, whether for import or transfer to a foreign country, a fee, not to exceed three cents per barrel of oil received. In the case of refineries receiving crude oil by pipeline, the collection of the fee shall be waived, upon the certification by the Secretary, to the Secretary of the Treasury, that the handling of the oil involved, either in the pipeline or at the refinery does not constitute a significant threat of oil pollution. Oil upon which a fee has been levied under this paragraph shall not be subject to any subsequent levy hereunder.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable rules and regulations relating to the collection of the fees authorized by paragraph (1), and, from time to time, the modification thereof. Any modification of the fees shall be designed to insure that the Fund is maintained at a level not to exceed $200,000,000 and such modification shall become effective on the date specified therein but no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register.

(3)(A) Any person who fails to collect or pay fees as required by the regulations promulgated under paragraph (2) shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fees required to be collected or paid, and the interest on those fees. Upon the failure of any person so liable to pay any penalty, fee, and interest upon demand, the Attorney General may, at the request of the Secretary of the Treasury, bring an action in the name of the fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the fund.

(2) The Secretary of the Treasury may invest any excess in the fund, above the level determined under paragraph (1), in interest bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the fund shall be credited to and form a part of the fund.

(f) If at any time the moneys available in the fund are insufficient to meet the obligations of the fund the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of these notes or obligations shall be made by the Secretary from moneys in the fund. These notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purposes for which securities may be issued under that Act are extended to include any purchase of these notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of these notes or other obligations shall be treated as public debt transactions of the United States.

DAMAGES AND CLAIMANTS

SEC. 103. (a) Claims for damages for economic loss, arising out of or directly resulting from oil pollution, may be asserted for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) loss of use of real or personal property:

(4) injury to, or destruction of, natural resources;

(5) loss of use of natural resources;

(6) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) A claim authorized by subsection (a) may be asserted—

(1) under item 1, by any United States claimant: *Provided*, That the owner or operator of a vessel or facility involved in an incident may assert such a claim only if he can show that he is entitled to a defense to liability under section 104(c)(1) or 104(c)(2) or, if not entitled to such a defense to liability, that he is entitled to a limitation of liability under section 104(b); *Provided further*, That where he is not entitled to such a defense to liability but entitled to such a limitation of liability, such claim may be asserted only as to the removal costs incurred in excess of that limitation;

(2) under items 2, 3, and 5, by any United States claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(3) under item 4, by the President, as trustee for natural resources over which the United States Government has sovereign rights or by any State for natural resources belonging to or appertaining to the State;

(4) under item 6, by any United States claimant, if the claimant derives at least twenty-five per centum of his earnings from activities which utilize the property or natural resource;

(5) under item 7, by any state or political subdivision thereof;

(6) under any item, by a foreign claimant to the same extent that a United States claimant may assert a claim, if—

(A) the claimant is a resdient of the foreign country where the oil pollution occurred;

(B) the claimant is not otherwise compensated for his loss;

(C) the oil was discharged from a facility or from a vessel or ship located within the navigable waters; and

(D) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for the United States claimants: *Provided however*, That condition (C) shall not apply where the claim is asserted by a resident of Canada and where the oil pollution involves oil that has been transported through the pipeline authorized under the Trans-Alaska Pipeline Authorization Act, as amended, has been loaded on a ship for transporta-

tion to a port in the United States and is discharged from the ship prior to being brought ashore in that port; and

(7) under any item, by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this subsection, when he determines that the claimants would be more adequately represented as a class in asserting their claims.

(c) If the Attorney General fails to take action under clause (7) of subsection (a) within sixty days of the date on which the Secretary designates a source under section 106, any member of a group may maintain a class action to recover damages on behalf of that group. Failure of the Attorney General to take action shall have no bearing on any class action maintained by any claimant, for damages authorized by this section.

LIABILITY

S53. 104. (a) Subject to the provisions of subsections (b) and (c), the owner and operator of a vessel other than a public vessel, or of a facility, which is the source of, or poses a threat of, oil pollution, shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 103.

(b) Except when the incident is caused by gross negligence or willful misconduct within the privity or knowledge of the owner or operator, or when the incident is caused by a gross or willful violation by the owner or operator of applicable safety, construction, or operating standards or regulations of the Federal Government, or when the owner or operator fails or refuses to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup activities, the total liability under subsection (a) shall not exceed—

(1) in the case of a vessel other than a ship, $150 per gross ton,

(2) in the case of a ship, $300 per gross ton or $250,000, whichever is greater up to a maximum of $30,000,000, or

(3) in the case of a facility, $50,000,000 or such lesser limit as is established under subsection (d).

(c) There shall be no liability under subsection (a)—

(1) to the extent that the incident is caused by an act of war, hostilities, civil war, or insurrection, or by a natural phenomenon of an exceptional, inevitable, and irresistible character;

(2) to the extent that the incident is caused by an act or omission of a third party; or

(3) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant.

(d) The Secretary shall issue regulations establishing limits of liability, up to $50,000,000, for various classes of facilities: *Provided*, That the limits of liability for deepwater ports and offshore production facilities shall not be less than $50,000,000. These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents as to those classes. Such limits shall, to the extent practicable, be comparable to those limits established under subsection (b)(2), taking into account the relative potential threat of oil pollution.

(e) The Secretary shall, from time to time, report to Congress on the desirability of adjusting the monetary limitation of liability specified in subsection (b).

(f)(1) Subject to the provisions of paragraph (2) hereof, the fund shall be liable for all damages for which a claim may be asserted under section 103, to the extent that the loss is not otherwise compensated.

(2) Except for the removal costs specified in clause (1) of section 101(z), there shall be no liability under paragraph (1) hereof to the extent that the incident is caused by an act of war, hostilities, civil war, or insurrection, or, as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant.

(g)(1) In addition to the damages for which claims may be asserted under section 103, and without regard to the limitation of liability provided in section 104(b), the owner, operator, or guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of the claim for the period from the date upon which the claim was presented to such person to the date upon which the claimant is paid, inclusive, less the period, if any, from the date upon which the owner, operator, or guarantor shall offer to the claimant a namount equal to or

greater than that finally paid in satisfaction of the claim to the date upon which the claimant shall accept that amount, inclusive. However, if the owner, operator, or guarantor shall offer to the claimant, within sixty days of the date upon which the claim was presented, or of the date upon which advertising was commenced pursuant to section 106, whichever is later, an amount equal to or greater than that finally paid in satisfaction of the claim, the owner, operator, or guarantor shall be liable for the interest provided in this paragraph only from the date the offer was accepted by the claimant to the date upon which payment is made to the claimant, inclusive.

(2) The interest provided in paragraph (1) shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(h) Nothing in this Act shall bar a cause of action that an owner or operator, subject to liability under subsection (a), or a guarantor, has or would have, by reason of subrogation or otherwise, against any person or governmental entity.

(i) To the extent that they are in conflict with, or otherwise inconsistent with, any other provisions of law relating to liability or the limitation thereof, the provisions of this section shall supersede all such other provisions of law, including those of section 4283(a) of the Revised Statutes, as amended (46 U.S.C. 183(a)).

FINANCIAL RESPONSIBILITY

SEC. 105. (a)(1) The owner or operator of any vessel (except a nonself-propelled barge that does not carry oil as fuel or cargo), over 300 gross tons, which uses an offshore or onshore facility or the navigable waters, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to satisfy the maximum amount of liability applicable to that vessel under the provisions of section 104(b) of this title and the provisions of subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act, as amended. Financial responsibility may be established by any one, or any combination, of the following methods: evidence of insurance, guarantee, surety bond, or qualification as a self-insurer. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In cases where an owner or operator owns, operates, or charters more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall refuse the clearance required by section 4197 of the Revised Statutes of the United States, to any vessel subject to this subsection, which does not have certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(3) The Secretary, in accordance with regulations promulgated by him, shall (A) deny entry to any port or place in the United States or navigable waters to, and (B) detain at the port or place in the United States, from which it is about to depart for any other port or place in the United States, any vessel or ship subject to this subsection which, upon request, does not produce certification furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(b) The owner or operator of a facility shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability applicable to that facility under the provisions of section 104(b).

(c) Any claim authorized by section 103(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section. In defending such claim the guarantor shall be entitled to invoke all rights and defenses which would be available to the owner or operator under this title. He shall also be entitled to invoke the defense that the incident was caused by the willful misconduct of the owner or operator, but shall not be entitled to invoke any other defense which he might have been entitled to invoke in proceedings brought by the owner or operator against him.

NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

SEC. 106. (a) The person in charge of a vessel or facility, which is subject to the provisions of this title, as soon as he has knowledge of an incident in which the vessel or facility is involved, shall immediately notify the Secretary of the incident.

(b) (1) When the Secretary receives information, purusant to subsection (a) or otherwise, of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source, and the guarantor, of that designation.

(2) When a source designated under paragraph (1) is a vessel or a facility, and the owner, operator, or guarantor fails to inform the Secretary, within five days after receiving notification of the designation, of his denial of such designation, such owner, operator, or guarantor, in accordance with regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, at the expense of the owner, operator, or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator, or guarantor.

(c) In a case where—

(1) the owner, operator, and guarantor all deny a designation in accordance with paragraph (2) of subsection (b),

(2) the source of the discharge was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the discharge under paragraph (1) of subsection (b),

the Secretary shall advertise the procedures by which claims may be presented to the fund.

(d) Advertisement under subsection (b) shall commence no later than fifteen days from the date of the designation made thereunder to continue for a period of no less than thirty days.

CLAIMS SETTLEMENT

SEC. 107. (a) Except as provided in subsection (b), all claims shall be presented to the owner, operator, or guarantor.

(b) All claims shall be presented to the fund—

(1) where the Secretary has advertised in accordance with section 106(c), or

(2) where the owner or operator may recover under the provisions of section 103(b)(1).

(c) In the case of a claim presented in accordance with subsection (a), and in which—

(1) the person to whom the claim is presented denies all liability for the claim, for any reason, or

(2) the claim is not settled by any person by payment to the claimant within sixty days of the date upon which (A) the claim was presented, or (B) advertising was commenced pursuant to section 106(b)(2), whichever is later,

the claimant may elect to commence an action in court against the owner, operator, or guarantor, or to present the claim to the fund, that election to be irrevocable and exclusive.

(d) In the case of a claim presented in accordance with subsection (a), where full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 104(b), or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the fund.

(e) In the case of a claim presented to the fund, pursuant to subsection (b), (c), or (d), and in which the fund—

(1) denies all liability for the claim, for any reason, or

(2) does not settle the claim by payment to the claimant within sixty days of the date upon which (A) the claim was presented to the fund, or (B) advertising was commenced pursuant to section 106(c), whichever is later,

the claimant may submit the dispute to the Secretary for decision in accordance with section 554 of title 5 of the United States Code. However, a claimant who

has presented a claim to the fund pursuant to subsection (b) may elect to commence an action in court against the fund in lieu of submission of the dispute to the Secretary for decision, that election to be irrevocable and exclusive.

(f) (1) The Secretary shall promulgate regulations which establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

(2) Except as provided in paragraph (3), the Secretary shall use the facilities and services of private insurance and claims adjusting organizations in administering this section and may contract to pay compensation for those facilities and services. Any contract made under the provisions of this paragraph may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon a showing by the Secretary that advertising is not reasonably practicable, and advance payments may be made. A payment to a claimant for a single claim in excess of $100,000, or two or more claims aggregating in excess of $200,000, shall be first approved by the Secretary.

(3) To the extent necessitated by extraordinary circumstances, where the services of such private organizations are inadequate, the Secretary may use Federal personnel to administer the provisions of this section.

(g) Without regard to subsection (b) of section 556 of title 5 of the United States Code, the Secretary is authorized to appoint, from time to time for a period not to exceed one hundred and eighty days, one or more panels, each comprised of three individuals, to hear and decide disputes submitted to the Secretary pursuant to subsection (e). At least one member of each panel shall be qualified in the conduct of adjudicatory proceedings and shall preside over the activities of the panel. Each member of a panel shall possess competence in the evaluation and assessment of property damage and the economic losses resulting therefrom. Panel members may be appointed from private life or from any Federal agency except the staff administering the fund. Each panel member appointed from private life shall receive a per diem compensation, and each panel member shall receive necessary traveling and other expenses while engaged in the work of a panel. The provisions of chapter 11 of title 18, United States Code, and of Executive Order 11222 regarding special government employees, apply to panel members appointed from private life.

(h) (1) Upon receipt of a request for decision from a claimant, properly made, the Secretary shall refer the dispute to (A) an administrative law judge, appointed under section 3105 of title 5 of the United States Code, or (B) to a panel appointed under subsection (g).

(2) The administrative law judge and each member of a panel to which a dispute is referred for decision shall be a resident of the United States judicial circuit within which the damage complained of occurred, or, if the damage complained of occurred within two or more circuits, of any of the affected circuits, or, if the damage occurred outside any circuit, of the nearest circuit.

(3) Upon receipt of a dispute, the administrative law judge or panel shall adjudicate the case and render a decision in accordance with section 554 of title 5, United States Code. In any proceeding subject to this subsection, the presiding officer may require by subpena any person to appear and testify or to appear and produce books, papers, documents, or tangible things at a hearing or deposition at any designated place. Subpenas shall be issued and enforced in accordance with procedures in subsection (d) of section 555 of title 5, United States Code, and rules promulgated by the Secretary. If a person fails or refuses to obey a subpena, the Secretary may invoke the aid of the district court of the United States where the person is found, resides, or transacts business in requiring the attendance and testimony of the person and the production by him of books, papers, documents, or any tangible things.

(4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which, or nearest to which, the damaged complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts.

(5) The decision of the administrative law judge or panel under this subsection shall be the final order of the Secretary, except that the Secretary, in his discretion and in accordance with rules which he may promulgate, may review the decision upon his own initiative or upon exception of the claimant or the fund.

(6) Final orders of the Secretary made under this subsection shall be reviewable pursuant to section 702 of title 5, United States Code, in the district courts of the United States.

(i)(1) In any action brought against an owner, operator, or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the fund at the same time those pleadings are served upon the opposing parties.

(2) The fund may intervene in the action as a matter of right.

(3) In any action to which the fund is a party, if the owner, operator, or guarantor admits liability under this Act, the fund upon its motion shall be dismissed therefrom.

(4) If the fund receives from either the plaintiff or the defendant notice of such an action, the fund shall be bound by any judgment entered therein, whether or not the fund was a party to the action.

(5) If neither the plaintiff nor the defendant give notice of such an action to the fund, the limitation of liability otherwise permitted by section 104(b) of this title is not available to the defendant and the plaintiff shall not recover from the fund any sums not paid by the defendant.

(j) In any action brought against the fund, the plaintiff may join any owner, operator, or guarantor, and the fund may implead any person who is or may be liable to the fund under any provision of this Act.

(k) No claim may be presented, nor may an action be commenced for damages recoverable under this title, unless that claim is presented to, or that action is commenced against, the owner, operator, or guarantor, or against the fund, as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under section 103(a), or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SUBROGATION

SEC. 108. (a) Any person or governmental entity, including the fund, who shall pay compensation to any claimant for an economic loss, compensable under section 103, shall be subrogated to all rights, claims, and causes of action which that claimant has under this Act.

(b) Upon request of the Secrtary, the Attorney General may commence an action, on behalf of the fund, for the compensation paid by the fund to any claimant pursuant to this title. Such an action may be commenced against any owner, operator, or guarantor, or against any other person or governmental entity, who is liable, pursuant to any law, to the compensated claimant or to the fund, for the damages for which the compensation was paid.

(c) In all claims or actions by the fund against any owner, operator, or guarantor, pursuant to the provisions of subsections (a) and (b), the fund shall recover—

(1) for a claim presented to the fund (where there has been a denial of source designation) pursuant to section 107(b)(1), or (where there has been a denial of liability) pursuant to section 107(c)(1)—

(A) subject only to the limitation of liability to which the defendant is entitled under section 104(b), the amount the fund has paid to the claimant, without reduction,

(B) interest on that amount, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the fund is paid by the defendant, inclusive, less the period, if any, from the date upon which the fund shall offer to the claimant the amount finally paid by the fund to the claimant in satisfaction of the claim against the fund to the date upon which the claimant shall accept that offer, inclusive, and

(C) all costs incurred by the fund by reason of the claim, both of the claimant against the fund and the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees, and

(2) for a claim presented to the fund pursuant to section 107(c)(2)—

(A) in which the amount the fund has paid to the claimant exceeds the largest amount, if any, the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) subject to dispute by the defendant as to any excess over the amount offered to the claimant by the defendant, the amount the fund has paid to the claimant,

(ii) interest, at the rate calculated in accordance with section 104(g)(2), for the period specified in clause (1) of this subsection, and

(iii) all costs incurred by the fund by reason of the claim of the fund against the defendant, including, but not limited to, processing costs, investigating costs, court costs, and attorneys' fees, or

(B) in which the amount the fund has paid to the claimant is less than or equal to the largest amount the defendant offered to the claimant in satisfaction of the claim of the claimant against the defendant—

(i) the amount the fund has paid to the claimant, without reduction,

(ii) interest, at the rate calculated in accordance with section 104(g)(2), from the date upon which the claim was presented by the claimant to the defendant to the date upon which the defendant offered to the claimant the largest amount referred to in this subclause. (However, if the defendant tendered the offer of the largest amount referred to in this subclause within sixty days of the date upon which the claim of the claimant was either presented to the defendant or advertising was commenced pursuant to section 106, the defendant shall not be liable for interest for that period.), and

(iii) interest from the date upon which the claim of the fund against the defendant was presented to the defendant to the date upon which the fund is paid, inclusive, less the period, if any, from the date upon which the defendant shall offer to the fund the amount finally paid to the fund in satisfaction of the claim of the fund to the date upon which the fund shall accept that offer, inclusive.

(d) The fund shall pay over to the claimant that portion of any interest the fund shall recover, pursuant to clause (1), and subclause (A) of clause (2), of subsection (c), for the period from the date upon which the claim of the claimant was presented to the defendant to the date upon which the claimant was paid by the fund, inclusive, less the period from the date upon which the fund offered to the claimant the amount finally paid to the claimant in satisfaction of the claim to the date upon which the claimant shall accept that offer, inclusive.

(c) The fund is enitled to recover for all interest and costs specified in subsection (c) without regard to any limitation of liability to which the defendant may otherwise be entitled.

JURISDICTION AND VENUE

SEC. 109. (a) The United States district courts shall have exclusive original jurisdiction over all controversies arising under this title, without regard to the citizenship of the parties or the amount in controversy.

(b) Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has its principal office. For the purposes of this section, the fund shall reside in the District of Columbia.

PREEMPTION

SEC. 110. (a) Except as provided in this Act—

(1) no action may be brought in any court of the United States, or of any state or political subdivision thereof, for damages for an economic loss described in section 103(a), a claim for which may be asserted under this Act, and

(2) no person may be required to contribute to any fund, the purpose of which is to pay compensation for such a loss, nor to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim for such a loss.

(b) Nothing in subsection (a) shall prohibit an action by the fund, under any other provision of law, to recover compensation paid pursuant to this Act.

PENALTIES

SEC. 111. (a)(1) Any person who fails to comply with the requirements of section 105, the regulations promulgated thereunder, or any denial or detention order, shall be subject to a civil penalty of not more than $10,000.

(2) Such penalty may be assessed and compromised by the President or his designee, in connection with section 105(a)(1), and by the Secretary, in connection with section 105(a)(3) and section 105(b). No penalty shall be assessed until notice and an opportunity for hearing on the alleged violation has been given. In determining the amount of the penalty or the amount agreed upon in compromise, the demonstrated good faith of the party shall be taken into consideration.

(3) At the request of the official assessing the penalty, the Attorney General may bring an action in the name of the fund to collect the penalty assessed.

(b) Any person in charge who fails to give the notification required by section 106(a) shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both.

APPROPRIATIONS

SEC. 112. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

(b) The Secretary is hereby authorized to incur indebtedness on behalf of the United States, as provided in section 102(f), to the extent provided, in appropriation Acts, for that purpose.

TITLE II—EFFECTIVE DATES; CONFORMING AMENDMENTS

SEC. 201. (a) This section and all provisions of title I authorizing the delegation of authority or the promulgation of regulations shall be effective on the date of enactment of this Act.

(b) Title I, the regulations applicable thereto, and sections 202 and 203 shall be effective on the one hundred and eightieth day after the date of enactment of this Act.

SEC. 202. (a) Subsection (b) of section 204 of the Act of November 16, 1973 (87 Stat. 586), the Trans-Alaska Pipeline Authorization Act, is amended, in the first sentence, by inserting, after "any area", the words "in the State of Alaska", by inserting, after "any activities", the words "related to the Trans-Alaska Oil Pipeline", and by inserting, at the end of the subsection, a new sentence to read as follows: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(m) of the Comprehensive Oil Pollution Liability and Compensation Act of 1976."

(b) Subsection (c) of section 204 of the Act of November 16, 1973 (87 Stat. 586), the Trans-Alaska Pipeline Authorization Act, is hereby repealed.

(c) Section 17 of the Act of February 5, 1974 (88 Stat. 10), the Intervention on the High Seas Act, is amended to read as follows:

"SEC. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976 shall be available to the Secretary for actions and activities taken under section 5 of this Act.".

(d) Section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), is further amended as follows:

(1) Subsection (a) is amended by replacing the period following clause (14) thereof with a semicolon and adding a new clause (15) to read as follows:

"(15) 'person in charge' means the individual having immediate operational responsibility.".

(2) Paragraph (1) of subsection (c) is amended by (A) deleting the comma after the words "contiguous zone" and inserting in lieu thereof the words "or from an artificial island or fixed structure operating under authority of the Outer Continental Shelf Lands Act," and (B) adding after the word "vessel," the words "artificial island or fixed structure.".

(3) Clause (H) of paragraph (2) of subsection (c) is amended by inserting after the words "of this section" the words "or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976, as appropriate,".

(4) Subsection (d) is amended by deleting all after the words "incurred under this subsection" and inserting in lieu thereof "shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of this section.".

(5) Paragraph (5) of subsection (b) and subsections (f), (g), (h), (i), and (o) are amended by inserting after the word "oil" wherever it appears the words "(other than petroleum, crude oil, or any fraction or residue therefrom)".

(6) Subsection (f) is further amended, in the last sentence of paragraph (1), by inserting a comma after the word "vessel" and by adding immediately thereafter "or against the person furnishing financial responsibility under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976".

(7) Subsection (g) is further amended, by inserting in the last sentence, after the word "party" the words "or against the person providing financial responsibility for that party under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976".

(8) Subsection (k) is amended to read as follows:

"(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (i) and (l) of this section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section respecting such discharges shall also be deposited in this fund for these purposes. All sums appropriated to, or deposited in, the fund shall remain available until expended.".

(9) Subsection (l) is amended by deleting the period at the end of the second sentence and by inserting in lieu thereof the words "respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fractions or residue therefrom).".

(10) Paragraph (1) of subsection (p) is amended by deleting the words "Any vessel over three hundred gross tons, including any barge of equivalent size, but including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel," and inserting in lieu thereof "Any non-self-propelled barge over three hundred gross tons that carries oil (other than petroleum, crude oil, or any fractions or residue therefrom) or hazardous substances as cargo or fuel,".

(11) Subsection (p) is amended by deleting the words "vessel" or "vessels", wherever they appear, and inserting in lieu thereof "barge" or "barges", respectively.

(e) The Deepwater Port Act of 1974 (P.L. 93-627, 88 Stat. 2126) is amended as follows:

(1) In section 4(c)(1) strike "section 18(l) of this Act;", and insert in lieu thereof "section 105 of the 'Comprehensive Oil Pollution Liability and Compensation Act of 1976';".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), (n), and clause (1) of subsection (m) of section 18 are deleted.

(3) Clause (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section.", and inserting in lieu thereof "fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976.".

(4) Subsection (k) of section 18 is amended to read as follows:

"(k) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act of 1976, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d), respectively, and clauses (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

SEC. 203. If any provision of this Act or the applicability thereof is held invalid, the remainder of this Act shall not be affected thereby.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to establish a comprehensive system of liability and compensation for damages caused by oil pollution.

The legislation establishes strict liability for owners and operators of discharge sources and creates a compensation fund, to be main-

tained at a $200,000,000 level to respond to damage claims which are not satisfied by the responsible party or damage claims where the responsible party cannot be identified. The provisions of the Act would supersede duplicative provsions and funds, of limited application, which now exist in various Federal and State statutes.

Background

The use of oil and oil products in the national economy goes back many years, beginning its greatest expansion with the invention of the gasoline driven automobile, and the tremendous growth of the national industrial complex, particularly in the Twentieth Century. Although legislation has existed for some time dealing fractionally with the problem of oil pollution, such as the Oil Pollution Act, 1924 (now repealed), and the Oil Pollution Act, 1961, each dealing partially with the problem of oil pollution from vessels, it was the grounding of the tanker *Torrey Canyon* off the southwest coast of England in 1967 which focused general attention on the problem of oil pollution and led to international, as well as national, activities addressed to the problem. In the *Torrey Canyon* incident, approximately 100,000 tons of oil were spilled into the ocean as a result of the grounding, and subsequent destruction, of the tanker. Much of that oil found its way to the shores of the British Isles and the Coast of France, and, while resulting damages were somewhat difficult to compute, approximately $15,000,000 was spent on oil cleanup and a total of approximately $25,000,000 in claims were asserted, which were ultimately settled for about $7,000,000.

The incident pointed dramatically to the overall lack of protection from oil spills, and work was begun with uncharacteristic rapidity in the Inter-Governmental Maritime Consultative Organization (IMCO) to provide solutions to the problem. Not only did that organization reach agreement on tighter provisions for the Oil Pollution Convention of 1954 (the implementation of which is contained in the Oil Pollution Act, 1961), but an international conference, meeting in November, 1969, concluded with the signing of two Conventions, one of which has now been ratified by the United States and implemented in the last Congress by the passage of the Intervention on the High Seas Act. That Act extends to coastal States certain rights to intervene on the high seas to prevent or minimize oil pollution. The second of the Conventions addressed itself to liability for pollution damage. It is known as the International Convention on Civil Liability for Oil Pollution Damage, and while that Convention has been submitted to the Senate for advice and consent to ratification, the Senate declined to take action because of what it considered to be deficiencies in the Convention provisions. Those deficiencies were also recognized earlier by various other groups and, in an attempt to rectify the deficiencies, an additional conference was held in 1971, which resulted in the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. That Convention has now also been submitted to the Senate for advice and consent to ratification, but the Senate has thus far taken no action to give that advice and consent.

On the domestic scene, the first significant Federal legislation was enacted in 1970 as the Water Quality Improvement Act. That Act,

which amended the Federal Water Pollution Control Act, declared, as a national policy, that there should be no discharges of oil into or upon the navigable waters of the United States, adjoining shorelines, or the waters of the contiguous zone. It included a legislative requirement for a national contingency plan for the removal of discharged oil and establish liability for the removal costs. It did not address the question of any other damages. It also established a revolving fund not to exceed $35,000,000, to be available for Federal cleanup, subject to recoupment from the responsible spiller.

In subsequent years, the Congress enacted the Trans-Alaska Pipeline Authorization Act, which, for the first time, addressed in Federal statute, liability for damages other than cleanup costs by creating a compensation fund available to respond to damages cause by oil pollution from vessels moving oil on the marine leg from the Trans-Alaska Pipeline to ports in the Continental United States. A similar scheme of liability and a compensation fund were established in the Deepwater Port Act of 1974, to respond to damages, including cleanup costs, for oil pollution from offshore facilities constructed pursuant to that Act or from the vessels at those facilities. Beginning in the early 1970's, various States began to enact legislation covering damage, in various degrees, resulting from oil pollution incidents, and now some 23 States have statutes on the subject, varying widely in coverage and application.

These legislative activities resulted in a patchwork of sometimes conflicting provisions of both State and Federal law relating to liability for oil discharges. Recognizing the deficiencies, the Congress, in the Deepwater Port Act of 1974, directed the Attorney General, in cooperation with various governmental bodies, to study the matter and make recommendations for legislation to provide a comprehensive system for liability and compensation. The Congress stressed that the Attorney General should address the means of insuring a fair and expeditious compensation to the victims of pollution, without imposing unreasonable financial burdens on the persons involved in the necessary activities associated with the production and movement of oil. The Attorney General submitted his report to the Congress on July 3, 1975, and the President forwarded proposed legislation to implement the recommendations of that report, a proposal which was introduced as H.R. 9294 and H.R. 10969 by the Chairmen of the Committees on Merchant Marine and Fisheries and Public Works and Transportation, respectively, to which Committees, together with the Committee on International Relations, the President's proposal was referred. Those bills were the basis of hearings before the Subcommittee on Coast Guard and Navigation, commencing October 29, 1975. The hearings resulted in a report by the Subcommittee recommending the passage of H.R. 14862, a clean bill, representing the Subcommittee action on the various bills under consideration. In addition to H.R. 9294 and H.R. 10969, the Subcommittee also took into consideration various other proposals addressed, in whole or in part, to the same subject matter. These included H.R. 3638, H.R. 4301, H.R. 5917, H.R. 10363, H.R. 10756, H.R. 10920, H.R. 11115, H.R. 11669, H.R. 12028, and H.R. 12347, many of which were introduced while the hearings were proceeding.

Committee Action

The Subcommittee began hearings on the legislation on October 29, 1975, and held eight days of such hearings, terminating on January 29, 1976. During the course of those hearings, testimony was received from various Executive Departments, including the Department of State, the Department of the Treasury, the Department of Defense, the Department of Justice, the Department of the Interior, the Department of Commerce, the Department of Transportation, the Council on Environmental Quality, the Environmental Protection Agency, and the Federal Maritime Commission. Testimony was also received from representatives of the States of Massachusetts, South Carolina, and Texas, and numerous other States forwarded letters expressing their views on the legislation. From the public, testimony was heard from the American Institute of Merchant Shipping, the American Maritime Association, the American Waterways Operators, Inc., the Independent Liquid Terminals Association, the American Insurance Association, the American Institute of Marine Underwriters, the Maritime Law Association of the United States, the National Ocean Industries Association, the Center for Law and Social Policy, and the Environmental Policy Center. At the conclusion of the hearings, the Subcommittee met in five days of mark-up sessions, concluding on July 22, 1976, at which time the Subcommittee approved a clean bill, H.R. 14862, and recommended its passage to the Full Committee. The Full Committee considered the legislation in mark-up sessions on August 24, and August 25, 1976, and at the conclusion thereof, ordered the bill, with an amendment, to be reported to the House.

During the Subcommittee consideration of the legislation, there were several fundamental issues which were addressed. First, there was the question of whether the proposed legislation should include implementing provisions related to the International Convention on Civil Liability for Oil Pollution Damage, adopted at the Brussels Conference in 1969, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, adopted at a subsequent Brussels Conference in 1971. As included in H.R. 9294, those two Conventions, covering liability and compensation for oil pollution damage from seagoing vessels, would be implemented effective upon the dates on which they entered into force for the United States, that is, on the dates of their ratification by the United States, or their entry into force under their terms, subsequent to United States ratification, whichever date was later. For several reasons, the Subcommittee concluded that the legislation should not include such implementing provisions.

First, it was evident that there was little likelihood of affirmative action by the Senate on either of the two Conventions, and, even though the implementing language was conditioned upon favorable Senate action, it was decided that the enactment of such implementing legislation would be premature until such time as there was at least an indication of Senate consent. More basically, however, the first of the two Conventions, the Civil Liability Convention was criticized as providing a too restrictive a limitation of liability on seagoing ship owners (the dollar equivalent of 2,000 Poincare gold francs for each ton of the ship's tonnage), roughly equivalent to $160 per ton, with an

overall maximum of approximately $16,000,000 for any one incident. While the so-called Compensation Fund Convention provided for additional compensation not to exceed an aggregate amount paid under the two Conventions of approximately $36,000,000 for a single incident, that Convention was criticized not only for the reason that a major part of the fund would be derived from fees on oil imported into the United States, but also because of the Convention provisions that, in certain circumstances, the owner, liable up to $160 per ton, could receive a contribution from the fund of 25% of that liability, and a contribution to his total liability of any amount in excess of approximately $10,000,000. It should be noted that the fund would be derived, pursuant to a formula related to percentages of oil imports into the signatory nations. In the case of the United States, it was estimated that this would mean, with total international acceptance of the Convention, that oil imported into the United States would bear approximately 25% of the fund costs, and the fees collected for the international fund would be collected on the same oil as the fees collected for the creation of the new domestic fund established to respond to damages from sources other than the seagoing vessels covered under the Conventions.

Finally, the existence of the implementing language for the Civil Liability Convention resulted indirectly in what was perceived as too low a limitation of liability for vessels covered under Title I of the bill, including non-seagoing oil cargo barges, a limitation of $150 per gross ton, or $20,000,000, whichever is lesser. In view of these objections, the Subcommittee elected to delete the proposed implementation of the two Conventions, and H.R. 14862, as reported, does not contain any such implementation language.

Another significant issue which received considerable attention was the issue of liability and the limitation thereof. H.R. 9294 proposed that there would be no liability on the part of owners and operators where an oil discharge was caused solely by (1) an act of war, hostilities, civil war, or insurrection; (2) an act of God; or (3) a combination thereof. Nor would liability arise for damages of a claimant whose gross negligence or willful misconduct contribute to the injury. The Subcommittee received testimony urging that additional defenses should be available, specifically damage caused by the action of a third party and the negligence of the government in the maintenance of aids of navigation. The Subcommittee elected not to adopt those suggestions for the reason that it was felt desirable that defenses be kept to a minimum in order that the claims process might be simplier and more direct. It did, however, make specific provisions that, where any owner or operator was liable due to the act of a third party, including the government, his rights against that third party under any other provision of law would be preserved.

In addition, the decision was based upon the testimony of representatives of both the oil industry and the maritime industry, that it would be preferable for the designated source of a spill to handle the negotiation of claims in the first instance, thus, according to their testimony, insuring a more rational and expeditious disposition of claims, as well as avoiding an unnecessary build-up of a bureaucracy created to respond to claims against the fund, claims which would be obviated where the responsible spiller negotiated an acceptable settlement. The

single change with respect to liability that the Subcommittee made in the language of H.R. 9294 was to change the "act of God" defense to a defense for a natural phenomenon of an exceptional, inevitable, and irresistible character. This defense, similar to one contained in the Civil Liability Convention language, is intended to be more restrictive than the "act of God" defense, as generally applied in other laws. For instance, major storms might generally be pleaded as acts of God, but would not fit the "natural phenomenon of an exceptional, inevitable, and irresistible character", if, for example, the storm were predicted and expected and a vessel, knowing of its probability, proceeded into its path despite the weather prediction.

As to the limitation of liability, the Subcommittee adopted the general concept of H.R. 9294, providing for eligible vessels (other than those carrying oil in bulk as cargo), a limitation of $150 per gross ton, but removed the constraining figure of $20,000,000 which, as to such vessels, has no practical application. In the case of eligible ships, however (those vessels carrying oil in bulk as cargo), the Subcommittee, freed from the indirect constraints of the limits prescribed in the Civil Liability Convention, elected to set the limitation of liabilty at $300 per gross ton, or $30,000,000, whichever is lesser, and, in addition, provided for a floor of liability at $500,000 per vessel for each incident. Both the maximum of $30,000,000 and the floor of $500,000 were considered to be insurable, based on the general testimony received by the Subcommittee and through informal contacts with the insurance industry. In this latter regard, however, it should be recognized that the insurance industry representatives were somewhat vague in their statements on insurability in the absence of the third party defense, which they strongly recommended. Based upon that situation, the Subcommittee language on these provisions was amended in the Full Committee, as will be noted hereafter.

As to the limitation for facilities, H.R. 9294 provided for limits of liability not to exceed $50,000,000, but specified that the Secretary of Transportation could prescribe lower limitations for facilities, consistent with certain designated criteria. The Subcommittee adopted the $50,000,000 limitation for facilities, but made that limitation mandatory for deepwater ports and offshore production facilities and, as to lower prescribed limits for other types of facilities, added an additional requirement that the Secretary should, to the extent practicable, make such limits comparable to those applicable to vessels.

For comparison purposes, it should be noted that the Federal Water Pollution Control Act, as amended, also provides for limitation of liability in appropriate circumstances. That limitation of liability for vessels is $100 per gross ton or $14,000,000, whichever is lesser, and for facilities, $8,000,000, with a lesser limit available for certain onshore facilities with limited storage capacity. In each case, it should be remembered that the Federal Water Pollution Control Act covers liability only for cleanup costs and not for other damages. Under the Trans-Alaska Pipeline Authorization Act, the limitation of liability for vessels transporting oil from the pipeline terminus to the continental United States is $14,000,000. The liability under that Act relates to both cleanup costs and other damages. Under the Deepwater Port Act of 1974, the limitation of liability for vessels is the lesser of $150 per gross ton or $20,000,000, and for the deepwater port

facility, $50,000,000. The liability under that Act also involves cleanup costs and other damages.

One of the main points of contention concerning limitation of liability related to the treatment of cleanup costs. H.R. 9294 incorporates cleanup costs as an element of overall damages compensable under the bill, and includes that aspect within the overall limitation provisions. Other bills before the Committee provided that there would be no limitation of liability in respect to cleanup costs and the limitations would apply only to other forms of damage. The argument was advanced, in support of the latter approach, that unlimited liability for cleanup costs would serve as a major incentive not only to undertake immediate and thorough action in the event of a spill, but would also encourage owners and operators to expend more efforts on preventive measures which would serve to reduce the number of oil spills occurring. After extensive discussion, the Subcommittee concluded that an unlimited liability for cleanup costs was not the proper direction to go.

In the first place, it is clear from the testimony that such an exposure to liability is not insurable and would place some owners and operators in an untenable position, since, in many cases, they could not qualify as self-insurers. In addition, such a provision would, in many cases, serve as a disincentive to undertake cleanup activities in the event of large spills, since money expended for such cleanup would not serve to improve the financial situation of, for instance, an owner of a single barge who would, by such a provision, already be exposed to the total cleanup costs. Furthermore, such a provision would be contrary to the basic underlying concept of the legislation. The bills seeks to provide protection to innocent claimants for damages resulting in the handling of oil. While this commodity may constitute a threat to the environment as it is produced, processed, and moves to market, it is, nevertheless, a necessary part of our national economy and serves many purposes, which cannot, at least at present, be served by alternative means. The basic beneficiary group in the utilization of oil and oil products consists of the consumers and ultimately all costs involved are borne by that group. That situation is not changed by this legislation, since the costs of the production, processing, and handling of oil products are ultimately reflected in the final product cost. There are, however, two other groups which may be said to benefit from the use of oil. These are the oil owners and those, such as the transportation industry, which are in the business of processing and moving the oil. Since these two groups benefit by the use of oil, the bill proposes to have them share in the responsibility for actions, accidental or otherwise, which result in oil pollution. Therefore, with certain limited exceptions, the owners and operators of oil polluting sources are made generally liable for oil pollution incidents.

To deal with cases where the source of the oil pollution is unidentified and to share in the responsibility for unusually large or catastrophic incidents, the backup fund is established by the assessment of fees against the oil owner's. The Subcommittee concluded that the scheme was a rational division of responsibility and that the only real decision involved the exact method of dividing the responsibility. If too much responsibility is placed upon the owner or operator, so that he, in effect, shoulders all the liability for an oil pollution incident, his

insurance costs, where indeed his liability is insurable, would only result in an increased cost of doing business which would be passed on ultimately to the consumer in product prices. The created compensation fund would rarely need to be restored to, although its cost would also be reflected in product prices. The Subcommittee further concluded that the incentive aspect could be better handled by conditioning the right to limitation to an absence of gross negligence or willful misconduct on the part of the owner or operator, an absence of a gross or willful violation of various preventive measures elsewhere prescribed by law and a positive requirement to cooperate and assist in the furtherance of cleanup activities when a spill occurs. Furthermore, to encourage an owner or operator to undertake immediate and thorough cleanup, the bill would authorize that owner or operator to recoup from the fund his removal costs when such removal costs exceeded his liability under other provisions of the bill.

A third major issue considered by the Subcommittee concerned the question of preemption of other laws. One of the basic purposes of the legislation is to correct what has become and what, in the absence of this legislation, would further deteriorate into, a chaotic and confusing situation. There is a separate compensation fund now provided for the movement at sea of Alaskan Pipeline oil. There is another compensation fund provided in connection with the operation of deepwater ports. There is a third compensation fund proposed and now under consideration in connection with Outer Continental Shelf activities. There are separate compensation funds, differing in application and purpose, in several of the States. In each of these various provisions, there are differing provisions of liability. The result is that a single problem is being solved in piecemeal, duplicative, and costly measures.

To correct that situation, this legislaiton will supersede all such provisions and place in one piece of legislation an overall solution. Unless it is to preempt these other duplicative laws, it will not perform its basic function of providing in one place for the protection of innocent claimants, and, at the same time, prevent unnecessary burdens of cost on the ultimate product. Without preemption, this legislation would only add one more voice to this modern day tower of Babel. It, therefore, forbids any litigation in any Federal or State court to assert claims for damages that are covered in the bill, except as provided in the bill. Futhermore, it precludes the contribution by any person to any other fund, the purpose of which is to pay compensation for damages available under this Act, and finally, precludes any separate requirement for establishing or maintaining evidence of financial responsibility relating to the satisfaction of claims which may be asserted under this Act. The bill would not affect actions that might be taken pursuant to other Federal statutes, nor other actions within State competence.

The States, for instance, would not be precluded from acting within their existing authority to assess civil or criminal penalties for violations of their protective laws, nor would States be precluded from establishing and maintaining the capability to conduct cleanup activities in their waters and to acquire the necessary equipment to do so, whether by means of State appropriations or appropriate fees on oil activities. The Subcommittee believes, however, that the various States will find that such measures will prove to be unnecessary in view of the provisions of this legislation and will only result in increased costs

to the consumers within their jurisdiction without providing any additional protection to individuals who may be damaged by oil pollution incidents.

An additional issue, somewhat less controversial, concerned the mechanism by which claimants are to be compensated. One proposal was that claimants should have immediate access to the fund itself, without the necessity of filing a claim with the responsible spiller. While this proposal seemed to have some merit, it was concluded that a more efficient procedure would require that the claim first be submitted to the spiller, not only in most cases resulting in a quick uncomplicated settlement of the issue, but which would also avoid the necessity of maintaining an unnecessarily large group of personnel to handle settlements for the fund. The bill, therefore, provides that where the source of the spill is designated, claimants must present their claims to the owner or operator of that source. If their claims are not settled to their satisfaction by the designated source for any reason within 60 days, the claimant has the option to then present his claim to the fund. In addition, should the source designated deny that designation or deny his liability, the claimant may proceed directly to the fund for compensation. The fund would thereafter pursue any available remedies against the party denying liability.

Finally, two other issues considered by the Subcommittee involved the extension of the coverage of the bill to all oil spills, whether affecting waters or resulting solely in pollution of lands. Since the question of oil spills on land, not affecting navigable waters, is one that is more properly a matter for State law, not requiring national uniformity any more than other localized torts, it was concluded that land spills should not be included in this legislation. For similar reasons, the proposal to extend the coverage of the bill to hazardous substances was not adopted, since that issue differs considerably from the problems inherent in the transportation of oil. The threat of damages from transportation of hazardous substances varies significantly, dependent upon the substance involved, as does the capability of cleanup, once the substance has been introduced into the water environment. Furthermore, there appears to be no supportable reason why a compensation fund derived from oil movements should be available to respond to damages caused, for instance, by a casualty involving a chlorine barge, nor does any rational solution suggest itself as to how the liability of owners and transporters of hazardous substances should relate to the liability of owners and transporters of oil. Since the issues involved are radically different, and since the testimony was not directed to those issues, the Subcommittee concluded that any problems connected with damages from hazardous substances should be resolved elsewhere.

In its consideration of H.R. 14862, in mark-up sessions on August 24 and 25, 1976, the Committee on Merchant Marine and Fisheries reviewed the actions of its Subcommittee, together with the justifications leading to such actions. After full consideration, the Committee adopted several changes to the bill, consisting primarily of technical changes adopted for the purpose of removing possible ambiguities and of reflecting as accurately as possible the intent of various provisions of the bill. In addition to such changes, the Committee adopted several amendments which were substantive in nature. First, it added an

additional defense to liability consisting of acts or omissions of third parties. In doing so, it followed the recommendations of various witnesses, particularly those representing the insurance industry, to make certain that the liability imposed by the bill would be insurable and would, therefore, make it more feasible for owners and operators to meet the requirements as to evidence of financial responsibility required under section 105 of the bill. The practical effect of this change is that, to the extent that an incident is caused by an act or omission of a third party, the spiller is not liable to a claimant, who will then have access to the compensation fund, and the compensation fund can subsequently litigate the issue of liability against the spiller and the alleged responsible third party. The result of such litigation could find the spiller totally liable, the third party totally liable, or each liable for his proportionate share, based on a theory of comparative negligence.

In this connection, where two vessels are involved, it should be noted that the vessel constituting the source of an oil discharge is governed by the limitations of liability under this Act, whereas the vessel constituting the "third party" may have recourse to any other available provisions of law relating to limitation of liability, including the Limitation of Liability Act of 1851. To the extent, therefore, that such a third party vessel is found liable, its liability may be extensively limited. The result would be, therefore, that the fund might have to absorb some share of the liability, contrasted to the situation where the spiller, without the third party defense, would have to bear such uncollectable parts of the damage claims. It should further be noted that the third party defense also includes an act or omission of governmental entities, such as in the negligent maintenance of aids to navigation, as well as the negligent operation of a public vessel. In the latter connection, when a public vessel is itself the source of the discharge, the provisions of the bill require the claimant to assert his claim directly against the fund, and the fund, after paying compensation, then has the right to commence action under the Public Vessels Act, pursuant to the provisions of section 110(b).

The second substantive amendment adopted by the Committee was to change the limitation of liability provision relating to ships by reducing the "floor" under section 104(b)(2) to $250,000, in lieu of the $500,000, contained in the bill as reported by the Subcommittee. The practical effect here is that an oil-carrying barge may not limit its liability to less than $250,000, regardless of its size, and must, under provisions of the bill, establish and maintain evidence of financial responsibility accordingly.

Finally, the Committee amended the bill to include specific language to the effect that the liability and limitation thereof contained in this legislation shall supersede any other provisions of law relating to liability or limitations of liability for the type of damage covered under the bill. The superseded laws specifically include the so-called Limitation of Liability Act of 1851.

Summary

The Committee on Merchant Marine and Fisheries, by unanimous voice vote, ordered H.R. 14862 reported with an amendment striking

all after the enacting clause and substituting in lieu thereof the language incorporating the various amendments adopted by the Committee. As reported, the bill has one basic purpose. That purpose is to insure an unlimited, readily accessible compensation fund, to which claimants, damaged by oil pollution, may have recourse. All other provisions of the bill, including claims procedures, liability and limitation thereof, financial responsibility, and preemption, as well as the various conforming amendment to other laws, are contained to implement that basic purpose. As reported, the bill is a significant step, long needed to bring order out of the present chaos on the subject of compensation for oil pollution damage. It does not contain, and is not intended to contain, features related to other aspects of oil pollution, and is, therefore, silent as to specific requirements on construction or operational standards or on the specific requirements for response to oil pollution incidents. In providing a clear cut mechanism for compensation and liability, however, it certainly should provide an incentive to comply with other laws in the general subject area and to undertake voluntary actions which will serve to improve the overall situation.

Section-by-Section Analysis of H.R. 14862

DEFINITIONS

Section 101

(a) For brevity, Secretary of Transportation is shortened to "Secretary". The Secretary of Transportation is the Federal official primarily responsible for the implementation of the Act.

(b) "Fund" refers to the $200 million fund established under section 102, which is available to compensate those claimants who are not otherwise compensated.

(c) "Person" includes individuals and business associations and groups, but does not include governmental entities.

(d) "Incident" defines the type of event which triggers the notification, designation, and advertisement provisions of section 106. "Incident" includes events which threaten, as well as those which cause, oil pollution. Depending upon the type of event involved, an incident will trigger the appropriate procedural requirements of section 106, as well as responsive action under other laws, such as the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act of 1974.

(e) The word "vessel" is given the broadest definition possible. The intent is to exclude no watercraft from the scope of the definition. Vessels are one of the two major classes of oil handling devices, the owners or operators of which are subject to liability under the Act (the other being "facilities").

(f) "Public vessel" is a subclass of vesesl that performs governmental functions for Federal, State, or local units of government. It is a significant definition for purposes of ascertaining liability. Public vessels are exempted from the liability provision in section 104(a) and the victims of oil pollution caused by such vessels must seek relief against the fund. A vessel owned and operated by a governmental entity, however, is not necessarily a public vessel under this definition.

A government-owned or operated vessel, engaged in commercial activities is not included in the definition.

(g) "Ship" is a subclass of vessel which carries oil in bulk as cargo. Cargo is intended to refer to oil being transported as merchandise from one place to another, including oil owned by the ship owner or operator. The definition is significant in terms of the provisions of section 104(b)(2), relating to limitation of liability.

(h) "Facility" is an all encompassing definition that describes the major class of oil handling devices, other than vessels, whose owners or operators are subject to liability under section 104. To fall within the definition, a structure, or group of structures, must be used for the movement, production, or handling of oil. Included are such structures as drilling and producing platforms, tank farms, terminals, refineries, pipelines, railroad tank cars, and tank trucks. Also included are mobile drilling rigs while at a drilling site in the drilling mode. When moving by water to and from the drilling site, drilling rigs would fall within the definition of "vessel" under subsection (e).

(i) "Onshore facility" is a subclass of facility. It includes any facility, other than an offshore facility, which is located in, on, or under any land of the United States. Included are such structures as tank farms, terminals, refineries, rail tank cars, and tank trucks.

(j) "Offshore facility" is another subclass of facility. It includes facilities which are located in, on, or under the navigable waters of the United States, or, if the facility is subject to the jurisdiction of the United States, facilities located in, on, or under the high seas. In general, offshore facilities are primarily production facilities or pipelines. However, depending upon their location, terminals and refineries might also fall within the definition.

(k) "Terminal" is a subclass of facility. The definition is significant for the purposes of section 102(d), under the terms of which the owners of certain terminals are responsible for the fees through which the compensation fund is maintained. Included are permanently situated facilities, which (1) are located within the territorial limits of the United States, whether in, on, or under land or water, (2) are not owned by an agency of the Federal Government, and (3) receive oil in bulk directly from a vessel, offshore production facility, offshore port facility, onshore pipeline, or a pipeline constructed under the provisions of the Trans-Alaska Pipeline Authorization Act.

(l) "Refinery" is a subclass of terminal, and includes those terminals which receive crude oil for the purpose of refinement. The definition is significant in that under section 102(d), the Secretary of the Treasury is required to waive the collection of fees under that subsection for certain refineries where the reception or handling of oil does not constitute a significant threat of oil pollution.

(m) "Oil pollution" is one of the key definitions in the Act. Under the Act, claims may be asserted only for damages for economic loss which has a causal connection with oil pollution. Liability attaches to an owner or operator of a facility or vessel, or to a guarantor, only when the facility or vessel involved is the source of oil pollution or poses a threat of oil pollution. First, the oil must be present in unlawful quantities or must have been discharged at unlawful rates. For territorial waters, this means that there would have to be a violation of section 311(b)(3) of the Federal Water Pollution Control Act, as

amended. That Act, as implemented by the regulations promulgated thereunder, prohibits the discharge of oil which results basically in an oil sheen. Since such a discharge would be an unlawful quantity under that Act, it would constitute oil pollution under the definition of this Act. On the other hand, a discharge of oil into the contiguous zone, by a vessel subject to Article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, as amended, might well not constitute oil pollution, since Article IV allows certain discharges under specified conditions. Such permissible discharges, being lawful, do not constitute oil pollution, unless they are made at a rate which is excessive under the terms of the Convention.

Another element of the definition relates to the situs of the discharge. Discharges which occur outside the areas specified in the section do not constitute oil pollution. Unlawful discharge of oil into the navigable waters of the United States or their connecting or tributary waters, or onto immediate adjacent lands would be oil pollution. By including connecting and tributary waters, the intention is to extend the coverage of the Act not only to "navigable waters", but also any waters connecting with them or flowing into them. The coverage also extends to lands which closely border any of the included waters, a discharge onto which would result in an immediate threat to the adjacent waters. A spill into a completely landlocked fresh water pond or onto its adjacent lands would not be oil pollution within the meaning of the term.

As to locations seaward of "navigable waters", coverage is extended to those parts of the high seas which lie within the fishery conservation zone, as established under Public Law 94–265, and to those parts of the high seas which lie above the seabed or subsoil over which the United States exercises natural resource exploitation rights pursuant to the Outer Continental Shelf Lands Act. Oil pollution also may involve discharges of oil onto the territorial sea or adjacent shoreline of a foreign country, where the elements of section 103 (b)(6) are satisfied. That provision generally permits a claim to be asserted by a foreign resident where the discharge originated in United States navigable waters with an ensuing spread to the foreign territorial sea and where reciprocal rights are provided to United States residents by the claimant's country. Therefore, "oil pollution" would not extend to a discharge onto the internal waters of another country, because those waters are not a part of the territorial sea, nor would "oil pollution" extend to those discharges which originated outside United States navigable waters, except in the special situation involving Alaskan pipeline oil. By way of illustration, an unlawful discharge in United States navigable waters off the coast of Maine, which drifted into the territorial sea of Canada off the coast of New Brunswick, would constitute oil pollution provided that the claimant had standing to assert a claim under section 103(b)(6).

(n) The term "navigable waters" is significant for purposes of the definition of oil pollution found in section 101(m). The definition of "navigable waters" reflects the traditional admiralty concept. The determinative element of navigability is that the waters involved have the potential, by themselves or in conjunction with other waters, to be used as a link in interstate or foreign commerce or travel. This

is the traditional test that has been used by the U.S. Supreme Court. It is intentionally more restrictive than the meaning ascribed to "navigable waters" in some other Acts. The definition used here would reflect the Congressional intent to include as "navigable waters" only those waters which have been historically considered navigable with regard to their potential for bearing interstate or foreign traffic.

(o) "U.S. claimant" describes the broadest class of claimants that may assert claims damages under section 103(a), and applies to any resident of the "United States" as that term is defined in subsection (q). The term includes not only persons but governmental entities.

(p) "Foreign claimant" is a limited class of foreign residents who may assert a claim for damages under the bill. To qualify as a "foreign claimant", the claimant must satisfy all the requirements of section 103(b)(6).

(q) "United States" and "State" are used in their broadest sense to cover not only the several States, but various other classes of governmental jurisdictions.

(r) "Oil" encompasses all petroleum and petroleum-related products. It does not include non-petroleum oil or products, such as whale oil or vegetable oil. Such oil is outside the scope of this Act, although it is still subject to the provisions of the Federal Water Pollution Control Act, as amended.

(s) "Cleanup costs" includes not only the costs of actually removing discharged oil, but also the cost of measures taken to prevent oil pollution from occurring. This definition should be read in the context of the definition of "removal costs" found in subsection (z).

(t) "Person in charge" describes the individual having on-scene and immediate operational responsibilities over a vessel or facility. The person in charge need not be an "operator". He must simply be a person whose presence is required for operation of the vessel or ship. The person in charge is required, under section 106(a), to report knowledge of an incident involving oil pollution. Failure to report such information could subject the person in charge to the criminal sanctions imposed under section 111(b).

(u) "Claim" is the description of a demand for compensation brought directly against a responsible party or against the fund. It is distinguished from a cause of action, which is a demand for compensation pursued through the judicial system.

(v) "Discharge" is intended to describe any type of release of oil. It is used in connection with the definition of oil pollution, in subsection (m).

(w) "Owner" is defined to include not only those persons who hold title to a vessel or facility but those who, in the absence of holding a title, possess some equivalent evidence of ownership. Owners form one of the three major classes (the others being operators and guarantors) subject to liability under the Act. Those who hold title to a vessel or facility solely to protect an interest are specifically excluded from the definition of "owner" and are relieved of the attendant obligations and responsibilities imposed on "owners" by the Act. Among those excluded would be financial institutions who hold title in order to secure a loan. In such cases, the obligations and responsibilities would remain with the beneficial owner.

(x) "Operator" is the second major class subject to liability under this Act. Operators of vessels do not include those entities who are not totally responsible for the operation of the vessel. To fall within the definition, the entity must have assumed the full range of operational responsibility, including its manning and supply.

In the case of a facility, an operator is defined to be a person who is carry out operational functions for the owner of the facility pursuant to an agreement.

(y) "Property" takes on a limited meaning when used in this Act, meaning only that property which is real or personal, and which is littoral or riparian in nature. The definition specifically includes vessels. Any injury to that type of property may give rise to a claim for damages under section 103. The definition is important because the bill does not compensate losses connected with injury to non-riparian or non-littoral property.

(z) "Removal costs" are those costs incurred in cleaning up or preventing oil pollution. There are two classes of removal costs: those clean-up costs, defined in subsection (s), and those costs incurred by the Federal Government under the Federal Water Pollution Control Act, the Intervention on the High Seas Act, or the Deepwater Port Act. Removal costs are recoverable under section 103(a). The type of removal costs incurred under any of the specified three Acts will be reimbursed out of the fund, regardless of the existence of any defenses that could be asserted by the fund against other types of claims. This is provided for in section 104(f)(2). The other type of removal costs, "clean-up costs", are subject to the defenses that may be asserted by the fund under section 104(f)(2).

(aa) "Guarantor" is the third major class subject to liability under the Act. It is a generic term that describes any person, except an owner or operator, who provides the evidence of financial responsibility required under section 105. This term includes any person providing insurance, guarantees, or surety bonds for liability imposed on an owner or operator under this Act.

FUND ESTABLISHMENT, ADMINISTRATION, AND FINANCING

Section 102

(a) This subsection is the basic provision which establishes the oil pollution compensation fund that will be used to satisfy claims in accordance with the provisions of the Act. The $200 million figure represents the maximum level at which the fund is to be maintained. It does not represent a limitation of liability for claims against the fund; the fund will be liable for all provable damages even though they may exceed $200 million.

(b) This subsection sets out the four major sources of revenue for the fund. First, are all the revenues derived from the fees imposed the owners of the specified terminals under subsection (c). Second, are all amounts recovered by the fund under rights that the fund may acquire as the subrogee of those claimants whom the fund has compensated. The right to subrogation is set out in section 108. Third, are all sums which may be recovered under any other provision of the Act. Fourth, are those sums assessed under certain penalty provisions of the Oil Pollution Act of 1961, the Federal Water Pollution Control

Act, the Intervention on the High Seas Act, the Deepwater Port Act, and this Act.

(c) This subsection provides that, in addition to being available for the settlement of claims, pursuant to the procedures outlined in section 107, the fund shall also be immediately available to designated persons for removal costs as described in section 101(z)(1). Those costs relate to actions undertaken pursuant to the authority of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, and section 18(b) of the Deepwater Port Act of 1974. The Secretary of Transportation is authorized to promulgate the regulations which designate the person or persons who may obligate money from the fund for such removal costs.

(d)(1) This paragraph provides a basic authority to the Secretary of the Treasury to collect a fee, not to exceed three cents per barrel of oil received, from the owners of terminals, as defined in section 101(k). The class of owners from which the fee is collected is limited to those who own a permanently situated facility, located within the territorial limits of the United States (and not owned by the Federal Government), which receives oil in bulk from vessels, pipelines, or offshore facilities. This includes all refineries receiving crude oil for processing and all other terminals receiving any kind of oil for export or for entry into the United States, whether for import or for transshipment. Since deepwater ports, as covered by the Deepwater Port Act of 1974, are not "terminals", since they are located outside the territorial limits of the United States, the fee would not apply to them. It would subsequently be collected when the oil arrived at a terminal (or refinery) within the United States.

The Committee recognizes the possibility that certain refineries may not pose a threat of oil pollution. Therefore, the paragraph provides that the Secretary of the Treasury must waive the collection of fees from a refinery, when requested to do so by the Secretary of Transportation, after the latter official has determined that the handling of the oil into, or at, that refinery does not constitute an oil pollution threat. In order to qualify for such a waiver, the terminal (1) must be a refinery, (2) must be receiving crude oil by pipeline, and (3) must demonstrate to the satisfaction of the Secretary of Transportation that neither the pipeline from which the oil is received, nor the refinery receiving the oil, poses a "significant", that is, a measurable, threat of oil pollution. The rationale for such a waiver is that these owners should not bear the burden of underwriting a risk to which their operations do not contribute. An example of the type of facility which might qualify for a waiver would be an inland refinery, receiving oil directly from production wells through a pipeline, the route of which does not cross any navigable waters.

Since a literal reading of the fee collection provisions might require more than one collection on the same oil, the Act provides that, once a fee has been levied on any oil, that oil shall not be subject to further such levies under the Act.

(2) The Secretary of the Treasury is primary responsible for the collection of specific fees and is authorized, under this paragraph, to promulgate rules and regulations, after consultation with the Secretary of Transportation, relating to the collection of such fees. The paragraph also authorizes rules and regulations for the modification of the

per barrel fee as may be necessary to sustain the fund at a level not to exceed $200 million. The exact level of the fund is to be determined by the Secretary of the Treasury, as reasonably close to the $200 million level as may be necessary and practicable. The paragraph further provides that any such modification shall become effective no earlier than 90 days after it is published in the Federal Register.

(3) (A) This subparagraph establishes a civil penalty, not to exceed $10,000, for the failure to collect or pay the fee, as required by the regulations promulgated under subsection (d) (2). The Secretary of the Treasury is authorized to assess such a penalty, and upon a failure of payment thereof, the Attorney General is authorized, at the request of the Secretary of the Treasury, to take action on behalf of the fund to collect such unpaid funds.

(B) Criminal sanctions in accordance with section 1001 of title 18, United States Code, may be imposed upon anyone who is convicted of falsifying records or documents which are required to be kept pursuant to the regulations promulgated by the Secretary of the Treasury under this subsection.

(e) (1) The history of claims for oil spill damage indicates that the $200 million level represents a more than adequate ceiling. It is not expected that any single incident would produce claims even approaching the $200 million level. Therefore, it is contemplated that the Secretary would develop the information necessary to determine the amount of funds required in order promptly to meet the anticipated obligations of the fund.

(2) Once having determined what a reasonable maintenance level is, the Secretary of the Treasury is given the flexibility to invest any excess amounts in interest bearing special obligations of the United States. Any interest on, or profit from the sale of, these obligations shall revert to the fund.

(f) If the level of the fund is not adequate to meet its obligations, the Secretary of Transportation is authorized to borrow from the Secretary of the Treasury the money necessary to meet those obligations. The Secretary of Transportation shall do so by issuing notes on obligations to the Secretary of the Treasury, in accordance with terms and conditions set out by the latter. The fund shall be used to retire these obligations. The notes or obligations issued by the Secretary of Transportation shall bear an interest rate determined by the Secretary of theTreasury which takes into account yields of comparable obligations. Purchase, sale, or redemption of these notes by the Secretary of the Treasury is authorized as a public debt transaction.

DAMAGES AND CLAIMANTS

Section 103

This section enumerates the damages which may be claimed under the Act. It is important to note that the damages enumerated in subsection (a) may not, in all instances, be brought by all claimants. Subsection (a) must be read in conjunction with subsection (b), which describes those parties who have standing to bring the claims for the various damages that are set out in subsection (a).

"Removal costs" is a recoverable economic loss, as provided under subsection (a) (1). Subsection (b) (1) provides that all United States claimants may recover removal costs, except that the owners or opera-

tors of a vessel or a facility, involved in an oil pollution incident, have limited standing. The owner or operator who undertakes the clean-up of an oil spill may assert a claim against the fund for the cost of such an undertaking if (1) he can show that the incident was not in any way caused by a failure of his vessel or facility to be in full compliance with applicable safety and environmental laws, and (2) he either has a defense to liability under section 104(c)(1) or 104(c)(2), or, is entitled to a limitation of liability under section 104(b). In the latter case, where entitled to limitation, his right to claim is limited to the excess cost incurred, above the limitation to which he is entitled. The purpose of this provision, in relation to owners and operators, is two-fold. First, it removes any disincentive that the owner may have in undertaking the clean-up, based on the liability issue, and secondly, it serves as an encouragement for him to continue his clean-up activities even after his limitation of liability has been reached, by affording him a basis for compensation of the cost of clean-up in excess of his limitation. A guarantor involved would have the same rights, as subrogee to the owner or operator.

When property, as defined in section 101(y), is in some way injured by oil pollution, two avenues of relief are provided. Under subsection (a)(2), recovery for the injury to, or destruction of, that property is permitted, and, under subsection (a)(3), recovery for economic loss that results from being unable to use such property is permitted. Any United States claimant may bring claim under these two theories of recovery in accordance with subsection (b)(2).

Damages for, injury to, and destruction of, natural resources under subsection (a)(4), may be claimed only by the President, as trustee of those natural resources over which the Federal Government has jurisdiction, or by a State for natural resources under its jurisdiction. The standing to bring such a claim is conferred in subsection (b)(3). An example would be a State's claim against a discharger for injury to a coastal State park.

A separate theory of recovery in connection with natural resources is provided under subsection (a)(5) for those parties who suffer an economic loss because they are unable to use a natural resource injured by oil pollution. Standing for claiming such a loss is conferred on any United States claimant by subsection (b)(2).

The provisions of subsection (a)(6) allow recovery for loss of earnings due to injury of property or natural resources. In order to acquire standing to bring a claim under subsection (b)(4) for lost earnings, the claimant must derive at least 25 percent of his earnings from economic activity which utilizes the injured property or natural resources. The claimant need not be the owner of the property injured in order to have standing to bring a claim for lost earnings, as was required at common law. This means, for example, that a worker at a coastal hotel might have standing to bring a claim for damages, even though he owns no property which has been injured by oil pollution.

When injury to real or personal property occurs and the injury causes a reduction in tax revenue derived from that property, a State or local jurisdiction is given standing under subsection (b)(5) to assert a claim for one year's loss of revenue, attributable to such reduction.

Under subsection (b)(6), foreign claimants, as defined in section 101(p), and subject to the limitations in section 101(m)(3), are given rights comparable to United States claimants, provided they meet certain conditions. First, it should be borne in mind that oil pollution, as defined in section 101(m)(3), has a particular meaning for foreign claimants. Only oil pollution in the territorial sea or adjacent shoreline of the foreign claimant's country gives rise to a claim. Furthermore, under this subsection, there are four prerequisites to assertion of a claim by a foreigner. The claimant must be a resident of the country where the oil pollution occurred. The claimant must not have been compensated through some other means for his loss. Generally, the oil discharge must have occurred in United States navigable waters. Lastly, the recovery must be authorized by treaty or executive agreement, or the country involved must provide a comparable remedy for United States claimants in similar situations. In the case of oil being transported from the trans-Alaska pipeline to the continental United States, the last two conditions need not be satisfied where the oil is discharged, even outside U.S. navigable waters, at any time before it is brought ashore into a United States port. This provision substitutes for a similar provision in section 204(c) of the Trans-Alaska Pipeline Act, repealed by section 202(a) of this Act.

Subsection (b)(7) authorizes the Attorney General to act on behalf of a group of claimants and to consolidate their claims. This clause is designed to expedite the settlement of claims under section 107. Aside from consolidating the settlement of claims through the negotiation process, it is contemplated that the Attorney General would also be authorized to bring a class action in accordance with the Federal Rules of Civil Procedure.

Subsection (c) effectively suspends the rights of a claimant to bring a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure until 60 days have passed from the time when the Secretary of Transportation identifies the source of oil pollution under section 106. This suspension of rights to bring a cause of action is consistent with section 107, the claims settlement section, which encourages the negotiations to proceed for at least 60 days before resort to the court system is allowed. The fact that the Attorney General does not exercise his authority shall have no bearing on attempts by other parties to bring a class action under the provisions of Rule 23.

LIABILITY

Section 104

Subsection (a) establishes the basic theory of liability; owners and operators of vessels or facilities are subjected to joint, several, and strict liability for the damages described in section 103. When certain conditions are met, however, that liability can be limited. In the case of ships, that is vessels carrying oil in bulk as cargo, liability, when limited, will not exceed the greater of $300 per gross registered ton or $250,000, and in no case shall be more than $30,000,000. In the case of other vessels, if the conditions of limitation are met, the liability is limited to $150 per gross registered ton, without regard to any minimum and without regard to any maximum other than that determined by the tonnage of the vessel.

For facilities, a maximum of $50,000,000 has been set as the limit of liability; however, because the definition of facility is so broad, many owners and operators would be subject to unreasonably high limits of liability, considering the threat posed by a particular facility. For example, an oil discharge from a tank truck (which is, by definition, a facility), is unlikely to result in oil pollution of the magnitude caused by a discharge from an offshore production facility or deepwater port. Requiring the owner of that tank truck to be strictly liable for $50,000,000, and to carry insurance up to that level, would be inequitable. Therefore, the bill directs the Secretary, in subsection (d), to establish different limits of liability for various classes of facilities other than deepwater ports and offshore production facilities. In order to provide equitable treatment as between vessels and facilities, it is contemplated that the Secretary's limits would strike a rough equivalent between a vessel and a class of facility where both pose a comparable potential for oil pollution. In this regard, the Secretary is enjoined to take into account not only such factors as relative handling capacities, but also special circumstances which would reduce the oil pollution threat, such as an extensive diking arrangement around shoreside terminals, capable of confining oil discharges from storage tanks.

None of these limitations of liability are applicable when the incident triggering the oil pollution is caused by gross negligence or willful misconduct of, or within the "privity or knowledge" of, the owner or operator. The test of "privity or knowledge" is that applied normally under admiralty law. Under that test, acts are committed within the "privity or knowledge" of the owner when committed by persons to whom full control and authority have been given by the owner, such as in the case of a corporation, by the designation of a "managing officer". Independent acts of employees, to whom general authority has not been delegated, are not attributable to the owner as within his "privity or knowledge".

Neither is limitation of liability available when the incident is caused by a gross or willful violation by the owner or operator of applicable Federal standards or regulations related to the safety, construction, or operation of the vessel or facility, nor is it available when, after an incident, the owner or operator fails or refuses his reasonable participation in the ensuing clean-up activities, as may be requested by the responsible Federal official. The term "responsible Federal official" refers to that official designated, pursuant to statute or regulation, as being the coordinator of pertinent Federal clean-up activities.

Subsection (c) exonerates the owner and operator from the liability imposed by subsection (a), if he establishes (1) that the incident was caused by an Act of war, hostilities, civil war, or insurrection or by a natural phenomenon of exceptional, inevitable, or irresistible character, (2) an act or omission of a third party, or (3) as to a particular claimant, that his gross negligence or willful misconduct contributed to the incident or the economic loss. The defense for the exceptional natural phenomenon is similar to the "act of God" defense. The natural phenomenon defense is somewhat more limited in scope than the "act of God" defense often available under United States laws. It has three elements; the natural phenomenon must be exceptional, inevitable, and irresistible. Proof of all three elements is required for successful asser-

tion of the defense. The "act of God" defense is more nebulous, and many occurrences asserted as "acts of God" would not qualify as "exceptional natural phenomena". For example, a major storm may be an "act of God", but in an area (and at a time), where such a storm is predicted, or even only anticipated, it would not qualify as a "phenomenon of exceptional character".

Future experience under the Act, or distortions created by inflation, may make it desirable to adjust the specified limits of liability. Therefore, subsection (e) requires the Secretary to report to the Congress periodically his recommendations on the matter.

Subsection (f) sets out the basic liability of the fund, which, as established under section 102, constitutes one of the major features of this legislation. The specific procedure for asserting claims against the fund is outlined in section 107, whereby the fund serves to provide compensation in those instances where claims are not fully satisfied by payment from a responsible party, or where the responsible party cannot be identified or is not liable under the Act. Paragraph (2) of subsection (f) exonerates the fund from liability only where the incident is caused by an act of war, hostilities, civil war, or insurrection, or, as to a particular claimant, where his gross negligence or willful misconduct contributed to the incident or to his economic loss.

In addition to the liability for damages, subsection (g) imposes liability on owners, operators, and guarantors for interest over and above the limitations of liability invoked under subsection (b). Under subsection (g), the owner, operator, or guarantor is liable for interest on the amount paid in settlement of a claim, starting from the time when the claim was presented and running to the time when the claim is paid. However, when the owner, operator, or guarantor offers an amount equal to, or in excess of, the amount finally settled upon, and such an offer is made within 60 days of the date upon which the claim was presented, or of the date of the advertising was commenced, pursuant to section 106, there is no liability for any interest other than for the period between the time that the offer was accepted and the time that the claim was paid. For a similar offer made after the pertinent 60 day period, the owner, operator, or guarantor will, in addition, be liable for interest for the period between the time the claim was asserted and the time that the offer was made. The interest involved, under this subsection, is to be calculated at the commercial rates specified in paragraph (2).

Subsection (h) preserves to owners and operators, subject to liability under this Act, all rights which they may have, under any other law, against any third party. This provision insures that an owner or operator will not be barred from recovering against a third party whose negligence actually caused the incident, for which the owner or operator has not been exonerated under this Act. The measure of recovery against such a third party would have reference to the sums paid out under this Act as a foreseeable consequence of the negligent conduct of the third party. When a guarantor is involved, he would succeed, through subrogation, to the rights of the owner or operator for whom he provided evidence of financial responsibility.

Subsection (i) makes it clear that other laws relating to limitation of liability are superseded to the extent that they conflict with this Act. For instance, the Limitation of Liability Act of 1851 is one of the

historic enactments providing limitations of liability for certain vessel owners. To the extent that an owner of a vessel, which is the source of an incident, is liable under this Act, the provisions of this Act are applicable and the 1851 Act is inapplicable.

FINANCIAL RESPONSIBILITY

Section 105

Another major feature of the Act is the requirement that there be adequate funds immediately available to compensate injured parties. Since the primary responsibility to compensate victims of oil pollution rests with an owner or operator of a pollution source, he is generally required to establish his capability to meet his potential liability.

Subsection (a) imposes on the owners or operators of vessels over 300 tons the requirement that they carry insurance, have guarantees or surety bonds, or qualify as self-insurers to meet their liability up to the applicable limit set in section 104(b). This requirement to maintain evidence of financial responsibility is imposed on all such vessels, including foreign vessels using our navigable waters or calling at offshore facilities subject to the jurisdiction of the United States, as covered by the Act.

Paragraphs (2) and (3) provide the necessary sanctions for enforcing the financial responsibility requirements for vessels. Failure to comply with subsection (a)(1) will result in a termination of the right to engage in trade by triggering a refusal of necessary clearances by the Secretary of the Treasury under Customs laws, and the denial of entry or detention of noncomplying vessels by the Secretary of Transportation.

Comparable requirements to maintain financial responsibility sufficient to meet the liability imposed under section 104(b), are placed on owners or operators of facilities.

Failure of an owner or operator of either a vessel or a facility to meet the requirements of financial responsibility subjects that person to the civil penalty provided in section 111(a)(1).

In order to provide claimants with a full range of options for pursuing their claims, subsection (c) authorizes direct action against anyone providing financial responsibility for an owner or operator. The person providing financial responsibility can assert rights and defenses that the owner or operator could have asserted, and he can invoke the additional defense that the owner or operator caused the incident through willful misconduct. No other defenses can be invoked by the guarantor. The effect of limiting the guarantor's defenses is that the claimant does not become involved in collateral disputes between the owner or operator and the guarantor.

NOTIFICATION, DESIGNATION, AND ADVERTISEMENT

Section 106

This section sets out the procedure for claims that arise from an oil pollution incident. The first step in the process is the dissemination of information about the incident. The first person likely to have knowledge of an oil pollution incident is the person immediately responsible for the operation of the vessel or facility. Thus, upon learning of an incident, as defined in section 101(d), the person in charge must im-

mediately notify the Secretary of the incident. Failure to give such notice subjects such person to the criminal penalty provided in section 111(b).

Upon receiving information from the person in charge or from any other source, the Secretary, under subsection (b)(1), initiates the claims process by designating the source of the oil pollution incident and by notifying the owner, operator, and guarantor involved of the designation. The source designation is important because the owner, operator, and guarantor of the designated source will incur certain responsibilities under subsection (b)(2), if, within five days, he does not deny the Secretary's designation.

Subsection (b)(2) requires the owner, operator, or guarantor of a designated source to initiate advertisement of that designation and of the procedures by which claims may be asserted. The details of such advertising are to be spelled out in regulations issued by the Secretary. Such regulations may waive the requirement of specific advertising in cases where such advertising is not needed as, for example, when the damage is minimal and all potential claimants may be notified directly by other means. It should be noted that the failure to deny a designation does not preclude a later denial of liability on the part of the designated source. It merely makes the owner, operator, or guarantor of the designated source responsible for setting into motion the applicable claims procedure.

Failure to carry out the advertisement responsibilities properly may result in the Secretary's undertaking those responsibilities at the expense of the owner, operator, or guarantor.

Where there has been no denial of designation and the owner, operator, or guarantor advertises properly, the claims process may be asserted against any of those three parties. Subsection (c), however, provides for those instances where the Secretary must advertise the procedures by which claims may be brought against the fund. Those instances are situations where the owner, operator, and guarantor of the designated source have all denied the designation, where the Secretary has determined the source of the incident was a public vessel (as defined in section 101(f)), or where the source of the incident is unknown.

Subsection (d) sets out the advertising procedures to be carried out pursuant to requirements of subsection (b).

CLAIMS SETTLEMENT

Section 107

Economic loss claimed under section 103 may be compensated by payment from a responsible party (the owner, operator, or guarantor) or from the fund. Subsection (a) provides that claims shall be presented directly to the responsible party, except in those situations described in subsection (b). In accordance with subsection (b), claims shall be presented directly to the fund where the Secretary has advertised the claims procedure under section 106(c). This would occur under three circumstances: (1) where the owner, operator, and guarantor all deny the source designation made by the Secretary, (2) where the discharge was from a public vessel, or (3) where the source of the discharge is unknown. Claims may also be asserted directly against the fund by owners and operators of the designated source who qualify

under the standing provisions of section 103(b)(1). This means an owner or operator may assert a claim for removal costs under section 103(a)(1) directly against the fund either where he has successfully asserted a defense to liability or where he is claiming removal costs in excess of his limitation of liability.

Subsection (c) and (d) provide for a second line of compensation. Subsection (c) allows for claims against the fund where attempts to reach a settlement with the owner, operator, or guarantor were unsuccessful. The preconditions for going to this second line of compensation are (1) the denial of all liability for the claim by the person to whom the claim was presented, owner, operator, or guarantor, or (2) the passage of 60 days after presentment of the claim without any settlement, whichever occurs first. At this point, the claimant may elect to commence an action in the appropriate Federal court against the owner, operator, or guarantor, but once having decided to pursue the claim in court, the claimant cannot come back and assert his claim against the fund.

Subsection (d) also permits a claim against the fund in those instances where claimants are not adequately compensated by the owner, operator, or guarantor. Failure to receive full compensation could occur for a number of reasons. First, the owner, operator, or guarantor may have successfully invoked his limitation of liability under section 104(b) and the claim may exceed that limitation. The balance would be recoverable against the fund. For some other reason, such as insolvency, the owner, operator, or guarantor may not be able to satisfy all claims. Uncompensated claims could, therefore, be brought against the fund which serves as a backup for such situations.

Subsection (e) provides to those claimants who are proceeding against the fund, whether it be as first resort or second resort, the opportunity for review of the fund's actions by the Secretary in accordance with the Administrative Procedures Act. A review of the claim by the Secretary can only occur after the fund has denied liability or failed to settle the claim within 60 days. The occurrence of either of these two events also makes the claimant eligible to pursue a cause of action in Federal district court. The claimant, however, must choose his avenue of relief; once choosing to go to court, he may not then seek a review by the Secretary. A claimant who elects to take his dispute with the fund to the Secretary nevertheless still may have the Secretary's determination reviewed at a later date by the district court on the grounds that the Secretary's decision was arbitrary or capricious.

One of the primary policy objectives of this Act is to keep the overhead of processing claims at a minimum. The claims settlement procedure is designed to encourage informal negotiated settlement that will reduce expenses for claimants and to keep the administrative expenses of the Federal Government at a minimum.

Subsection (f), aside from giving the Secretary the responsibility for establishing a uniform claims procedure, directs the Secretary to use private insurance adjusters wherever possible. It does not appear that the Federal Government will need a large permanent staff to administer the Act. Because the workload will be variable, unnecessary expense would result from having full-time claims adjusters on the Federal payroll. By giving the Secretary the authority to contract for

these services, expert services should be available at a minimum expense to the Federal Government. Review of the private adjusters' activities is provided in subsection (f)(2). Payment of a single claim exceeding $100,00, or two or more claims exceeding $200,000 in the aggregate, must first be cleared by the Secretary. Should the private sector services prove to be inadequate, the Secretary is authorized to hire full-time Federal personnel to adjust and settle claims.

In those instances where a claimant is unable to reach a satisfactory settlement with the fund and thereafter presents his claim to the Secretary for review under subsection (e), the Secretary is authorized to delegate the review to a three man panel. Subsection (g) sets out the general qualifications of the panel members; at least one member shall be qualified to run an adjudicatory hearing and all shall be competent in assessment of the economic losses that may be claimed under the Act. Subsection (h) gives the Secretary the option of referring the dispute to an Administrative Law Judge instead of to the three man panel.

In the case of the appointment of a panel, or the referral to an Administrative Law Judge, each is required to be a resident of the judicial circuit where the damage claimed took place. The purpose of this section is to insure that the law judges and panel members hearing disputes are familiar with the locality involved. The usual powers required to conduct an administraitve proceeding under the Administrative Procedures Act are conferred upon the Administrative Law Judge and three man panel. This includes the authority to compel appearances, testimony and production of material. Enforcement of such authority is provided through the district court. The location of the hearings shall be the judicial district where the damage occurred.

Paragraphs (5) and (6) of subsection (h) provide for the review of decisions reached by the three man panel or the Administrative Law Judge. Their decisions become final orders of the Secretary within the meaning of the Administrative Procedures Act. As such, they are subject to review in the district court in accordance with the provisions of that Act.

Subsection (i) sets out rules of procedure that shall apply in the case of actions brought in court. Both plaintiffs and defendants are required to provide the fund with copies of complaints and pleadings. The fund may intervene as a matter of right, and may be dismissed from an action, upon its own motion, when either the owner, operator, or guarantor admits liability. Receipt of notice by the fund of an action shall give *res adjudicata* effect to any judgment, even though the fund chooses not to become a party. The sanction imposed on defendants for failure to give notice to the fund is a loss of limitation of liability to which the defendant would otherwise be entitled under section 104(b). The sanction imposed on plaintiffs is a loss of the right to collect from the fund any sums not paid to the plaintiff by the defendant.

Subsection (j) allows the plaintiff to join the owner, operator, or guarantor in an action brought against the fund, and the fund has a right to implead any other person who might be liable under the Act, pursuant to Rule 14 of the Federal Rules of Civil Procedure.

The statute of limitations for presenting claims or maintaining causes of action under this Act is set out in subsection (k). The claim-

ant has three years after discovering an economic loss, described in section 103, to assert his claim. There are instances where it may take some time to discover economic loss resulting from oil pollution, hence a claimant is given a generous amount of time within which to assert his claim. In order to allow for a final resolution of claims, however, an outside limit is placed on the assertion of a claim—six years after the date of the incident which resulted in the loss. The use of this type of statute of limitations permits enough passage of time to allow discovery of long term loss caused by the oil pollution; yet the outer limit of six years prevents the assertion of stale claims.

SUBROGATION

Section 108

Subsection (a) provides subrogation for anyone who pays a claimant compensation under the terms of the Act. Effectively, this means that if the fund pays a claimant for damages asserted under section 103, then the fund will stand in the shoes of that claimant and may assert any rights that the claimant has under the Act. Very often, this will mean that the fund will pay off a claim that is asserted against a discharger, and it will then be up to the fund to negotiate a settlement with the discharger or to litigate the claim. The result is to relieve a private claimant from protracted negotiations and litigation with the discharger, and thereby expedite the compensation of an injured claimant.

Under subsection (b), the Attorney General would be the party bringing action on behalf of the fund against anyone who is liable under this Act, or who is liable under any other law to the person compensated.

Subsection (c) sets out the specific items that the fund may recover against an owner, operator, or guarantor. The recoverable items depend on how the owner, operator, or guarantor responded to the claim.

The first class of owners, operators, and guarantors are those who either deny designation or who deny liability. If the fund proceeds against such parties, for compensation paid to claimants, those parties cannot contest the amount involved, except to the extent that it exceeds the limitation of liability available under section 104(b). Implicit in the fund's status as a subrogee is the defendant's right to assert against the fund any defense that he could have asserted against the claimant, pursuant to section 104(c).

If such defendants are found liable for damages, they are also liable for interest for the period from the time the claim was initially presented to the defendant by the claimant, to the time that the fund is paid by the defendant. Excluded from the interest liability is the period, if any, from the time the claimant receives an offer from the fund, of the amount finally paid, to the time when the fund actually paid the claimant. Thus, the defendant is not penalized for the delay by the claimant in accepting the settlement offer of the fund. The defendant must also pay costs incurred by the fund, both in the proceeding by the fund against the defendant, and in the proceeding by the claimant against the fund.

The second class of defendants consists of those who negotiated with the claimant but who were unable to reach a settlement within

the 60 day period specified in section 107(c)(2). In the case of that type of defendant, where the fund pays to the claimant more than the defendant ever offered to the claimant, the defendant must pay what the fund paid, subject to the defendant's right to contest the validity of any part of the amount paid, which is in excess of the largest amount offered in settlement to the claimant by the defendant. Such a defendant must also pay the interest that the first class of defendants described above would have to pay and, as to costs, must pay only the costs incurred by the fund in the proceeding by the fund against the defendant.

In the case of the second class of defendants where the fund eventually pays an amount less than, or equal to, the largest amount offered by the defendant to the claimant, the fund shall recover that amount without reduction. The rationale is that if the defendant was prepared to pay that amount to the claimant, and the fund settled, then the defendant has no reason to complain and should pay the full amount.

The fund shall also recover interest, running from the time the claim was presented by the claimant to the defendant to the date when the defendant offered the largest amount in satisfaction of the claim. Any such offer made within the specified 60 day period will relieve the defendant of any such interest liability. In any case, the defendant is liable for interest from the date upon which the claim was presented by the fund to the defendant to the date upon which the defendant made payment. A defendant who offers the fund an amount equal to that which is finally paid to the fund shall not be liable for interest during the period between that offer and the acceptance by the fund.

Subsection (d) provides for the distribution of the interest recovered pursuant to subsection (c). The interest recovered from the first class of claimant, those who deny designation or deny liability, shall be paid over to the claimant, but only for the period from the time the claim was first presented by the claimant, to the time the claimant was paid, less the period following the offer of the fund which was accepted by the claimant in settlement. This would leave in the fund the interest received for the period from the time the claimant was paid by the fund, to the time the fund was paid by the defendant. The same rule applies for those defendants of the second class who have failed to settle in 60 days, and who have offered less to the claimant than the fund eventually paid the claimant.

Costs and interests shall be recovered by the fund under subsection (e) without regard to any limitations of liability.

JURISDICTION AND VENUE

Section 109

The United States District Courts shall be the courts of first and exclusive resort for controversies arising under the Act. Claimants need not assert any particular amount in controversy in order for Federal jurisdiction to attach, nor do they have to assert diversity of citizenship in order to obtain Federal jurisdiction. Actions brought under the Act are Federal questions. Under subsection (b), the forum shall be located in the district either where the injury occurred or where the defendant resides or is found, or, in the case of a business association, where it has its principal office.

PREEMPTION

Section 110

Subsection (a)(1) is designed to prevent duplicate sources of compensation for damages provided under this Act. Any claim for damages of the type listed in section 103(a) can be asserted pursuant to this Act and no Federal or State court can entertain actions for such damages except as provided in this Act.

The purpose of the fund is to compensate those who suffer the damages described in section 103(a), and who have not otherwise been fully compensated. Therefore, under subsection (b)(2), no one may be required to contribute to any other fund which has those same purposes. Since they would not be duplicative of the fund established under this Act, a fund set up to purchase pollution abatement equipment or a fund established for the prevention, detection, or observation of oil pollution (such as environmental monitoring or research programs) would not be precluded by this Act. Therefore, a State could collect fees to finance such funds.

The section further prohibits any State requirement on owners or operators to establish and maintain evidence of financial responsibility, the purpose of which would be the satisfaction of the types of claims for damages described in section 103.

The preemption provisions in subsection (a) recognize exceptions provided in this Act. Therefore, subsection (a) should be read together with section 104(h) and subsection (b) of this section. Section 104(h) makes it clear that an owner or operator who is subjected to liability under this Act retains his rights under any other law to pursue a cause of action against a third party, including a governmental entity, whose negligence caused or contributed to the incident through which the owner or operator was subjected to liability. The same right is preserved to a guarantor who is subrogated to the rights of the owner or operator.

Subsection (b) makes it clear that the fund may bring an original cause of action to recover compensation paid to a claimant, even though the recovery may be for damages that are specified in section 103(a). For example, the fund may recover from a third party compensation paid to claimants because of an incident caused by the negligence of that third party, including a governmental entity. The fund would have to pursue its remedy under a common law or statutory right, such as, for example, under the Federal Tort Claims Act or the Public Vessel Act. Such a cause of action would not be precluded under subsection (b).

PENALTIES

Section 111

Subsection (a) sets out certain civil penalty provisions for violations of the Act. Any person who fails to comply with the requirements of section 105(a)(1), or section 105(b), or the regulations issued pursuant thereto, relating to the establishment and maintenance of evidence of financial responsibility, or who fails to comply with an appropriate order issued pursuant to the authority of section 105(a)(3), shall be subject to a civil penalty of not more than $10,000. The authority to assess and compromise the penalties involved is conferred upon the President or his designee in connection with the establish-

ment and maintenance of evidence of financial responsibility for vessels, and upon the Secretary in connection with such requirements as to facilities, as well as to violations involving denial or detention orders issued to vessels. Notice and opportunity for a hearing is required prior to the assessment of a penalty.

Subsection (b) subjects a "person in charge" to a potential fine of not more than $10,000, or imprisonment, or both, for failure to notify the Secretary of an oil pollution incident, pursuant to the requirements of section 106(a).

Additional penalties, both civil and criminal, relating to the collection and payment of fees to the fund, are contained in section 102(d)(3).

APPROPRIATIONS

Section 112

This section authorizes the appropriation of necessary funds to carry out the purposes of the title. In addition, subject to such specific budgetary authority as is contained in an appropriations Act, the Secretary is authorized to incur indebtedness, in order to meet obligations of the fund, when the fund has an insufficient amount of money on hand, pursuant to section 102(f).

TITLE II—EFFECTIVE DATES: CONFORMING AMENDMENTS

Section 201

Upon enactment of this Act, authority is conferred immediately upon the applicable Federal officials to delegate necessary authority and to draft and issue regulations in order that these delegations and regulations may be in place by the time the substantive provisions of the Act go into effect, 180 days after enactment.

Section 202

Section 202(a) makes some clarifying amendments to section 204(b) of the Trans-Alaska Pipeline Authorization Act. Section 204(b), as written, provides that permit holders under the Authorization Act who cause oil pollution "within or without the right-of-way for permit area" shall be liable for the total cost of removing the pollutants. A literal reading of that section could suggest that a permit holder might be held liable for the total cost of removal for a spill occurring anywhere in the word. That clearly was not the intention of this section. Rather, it was intended to cover oil pollution in the vicinity of the pipeline right-of-way or permit areas. The amendatory language in this Act will make it clear that the removal liability of the permit holder extends only to activities relating directly to the Trans-Alaska Pipeline. Additional language was included to make the Trans-Alaska Pipeline Act removal liability provisions inapplicable in those situations where this Act applies. In all other instances, those provisions in the Trans-Alaska Pipeline Authorization Act relating to removal costs and liability remain in effect.

Subsection 202(b) repeals that subsection of the Trans-Alaska Pipeline Authorization Act which establishes liability and compensation fund for damages caused by oil spills from vessels transporting

oil from the pipeline terminus to the continental United States. Those vessels are now covered under the provisions of this Act.

Subsection (c) amends the Intervention on the High Seas Act, in order to make available to the Secretary, for intervention procedures authorized by that Act, the fund established pursuant to section 102 of this Act.

Subsection (d) amends the Federal Water Pollution Control Act, as amended, in the following particulars:

(1) Subsection (a) of that Act is amended by including a new definition of "person in charge", similar to the definition of that phrase contained in section 101(t) of this Act. This corrects a deficiency and makes clear the original intent of that Act that the person who is charged with responsibility for reporting an oil pollution incident is the person who is in charge of the vessel at the time of the incident. That requirement is not intended to apply to any superior of the person with the immediate responsibility.

(2) Subsection (c) of that Act is amended by extending the coverage of the Federal Water Pollution Control Act to discharges from artificial islands or fixed structures operating under the authority of the Outer Continental Shelf Lands Act, in connection with the President's authority to remove oil or hazardous substances when the owner and operator of the source of the discharge fails to act properly.

(3) Subsection (c) of that Act is also amended by authorizing reimbursement to States from the fund established by this Act, for reasonable costs in removing discharges of oil or hazardous substances, pursuant to the national contingency plan published by the President for the purposes of such removal.

(4) Subsection (d) of that Act is amended by making the fund established under this Act available for expenses in connection with actions taken relating to maritime disasters.

(5) Subsections (b), (f), (g), (h), (i), and (o) of that Act related to required reports of discharges, liability for removal costs, third party liability, rights against third parties, recovery of removal costs, and liability for damages and preemption provisions, are amended by deleting from the coverage of that Act oil as defined in this Act, the result being that in those amended subsections, the Federal Water Pollution Control Act will apply only to "nonpetroleum" oil and hazardous substances.

(6) Subsection (f) of that Act is also amended by extending the right of recovery of removal costs incurred under that Act from the person furnishing financial responsibility under section 105 of this Act.

(7) Subsection (g) of that Act is also amended by permitting access by the government to the certificate of financial responsibility furnished for a third party in situations where that party is also subject to action under that Act.

(8) Subsection (k) of that Act is amended by deleting from the revolving fund established by that Act any clean-up costs associated with the discharge of oil, as defined in this Act.

(9) Subsection (l) of that Act, involving administrative expenses, is amended by deleting from its coverage oil, as defined in this Act.

(10) Subsection (p) of that Act, relating to certificates of financial responsibility, is amended by deleting from its requirements all vessels other than nonselfpropelled barges over 300 gross tons which carry either nonpetroleum oil or hazardous substances as cargo or fuel.

(11) Subsection (p) of that Act is also amended by changing the words "vessel" or "vessels" to "barge" or "barges", consistent with the amendment in item (10) above.

Subsection (e) amends the Deepwater Port Act of 1974, by deleting various subsections related to oil discharge, liability therefor, liability fund establishment, claims procedures, financial responsibility certificates, clean-up costs, and numerous correlative matters, all of which are now covered by the provisions of this Act. It further redesignates provisions of that Act accordingly.

Section 18(c) of the Deepwater Port Act is amended to authorize the Secretary of Transportation to draw on the fund established in this Act to cover the cost of removal of discharges of oil from deepwater ports and from vessels within the safety zone circumscribed around a deepwater port.

Section 18(k) of the Deepwater Port Act provided that States were not precluded from imposing their own liability or other requirements relating to discharges of oil. Section 110 would preempt State liability statutes which duplicate the provisions of this Act. However, the States may, pursuant to their authority under any other law, impose other requirements that are not inconsistent with this Act, such as requirements that relate to monitoring activities. To this extent, section 18(k) is left intact through the amendatory language in this section.

Section 203

This section provides for severability of sections of this Act that may be held invalid.

COST OF THE LEGISLATION

Pursuant to clause 7 of Rule XIII of the Rules of the House of Representatives, in the event that the legislation is enacted into law, and necessary appropriations are made consistent with the authorization provisions of section 112, the Committee estimates the maximum cost to the Federal Government at no more than $2,000,000 for the first fiscal year after enactment, and $1,000,000 for each succeeding fiscal year. If, despite the time constraints, the bill is enacted by the present Congress, the cost for fiscal year 1977 would be $2,000,000. The overall cost for the succeeding five fiscal years would be $5,000,000. In addition, the Secretary of Transportation is authorized to incur indebtedness to respond to claims where the fund itself is not sufficient to satisfy them. Such indebtedness would later be recouped from the fund as it is replenished to its $200,000,000 projected level. There is no basis on which to make an estimate for this possible contingency. All other aspects of the cost of the legislation will be borne by the fund provided in the bill. Based on the assumption that domestic production and oil imports will continue in the same general pattern as in recent years, with domestic production declining over the next few years and imported oil increasing during the same period, and based on the further assumption that fees to constitute the

fund would begin on April 1, 1977, the expected maximum receipts for the fund in fiscal year 1977 would be $92,000,000, in fiscal year 1978, $197,000,000, and in fiscal year 1979, $209,000,000. Depending upon disbursements from the fund, it could reach its maximum level as early as fiscal year 1978, at which time the fees would be discontinued until necessary for fund replenishment.

The Committee received no Departmental estimates contrary to the estimates contained in this section.

COMPLIANCE WITH CLAUSE 2(L)(3) OF RULE XI

With respect to the requirements of Clause 2(l)(3) of Rule XI of the Rules of the House of Representatives—

(A) No oversight hearings have been held during the present Congress on this subject, other than two days of hearings on May 20 and 21, 1976, reviewing an oil spill which occurred from a barge in the Chesapeake Bay in February 1976. A report of those hearings has not yet been published, but the information received therein was used in connection with the information obtained during the eight days of hearings on this legislation.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of cost for H.R. 14862, as reported, pursuant to section 403 of the Congressional Budget Act of 1974. That information is as follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

SEPTEMBER 2, 1976.

1. Bill number: H.R. 14862.

2. Bill title: Comprehensive Oil Pollution Liability and Compensation Act of 1976.

3. Bill purpose: The major purpose of this bill is to provide a comprehensive system of liability and compensation for oil spill damage and removal costs.

4. Cost estimate: The major budgetary effects that would result from this bill are receipts from the pollution fund fee and contingent liabilities. These effects are summarized below and described in the basis of estimate.

[In millions of dollars]

Receipts:	
Fiscal year 1977	80
Fiscal year 1978	90
Fiscal year 1979	30
Fiscal year 1980	--
Fiscal year 1981	--
Costs:	
Fiscal year 1977	(1)
Fiscal year 1978	(1)
Fiscal year 1979	(1)
Fiscal year 1980	(1)
Fiscal year 1981	(1)

[1] Indeterminable.

In addition, the bill would authorize appropriation of "such sums as are necessary" to implement the Fund. A $20 million appropriation in the first year of the program is estimated to be sufficient. The bill would also commit the Federal government to an unlimited contingent liability.

The flow of costs resulting from this bill is a function of the timing of oil spills and cannot be projected. There are likely to be non-zero costs in particular years, but if the Fund is administered such that new fees are collected to replenish the Fund as outlays occur, the net cost over time is expected to be zero.

5. Basis of estimate: The estimates of receipts are based on a projection of the volume of oil subject to the fee and an assumption that the 3 cents per barrel maximum charge would be implemented. The volume of oil projected is for all oil imports and all domestic oil not transported by pipeline. Since the average daily exports of crude oil and petroleum products for July 1976 were less than 50 thousand barrels, exports and transfers are assumed to have a negligible effect on the revenues received. All oil transported by pipeline is assumed to be exempted from the fee.

Imports are projected by expanding the 1975 figure of 6 million barrels per day by the 12 percent average annual growth rate of imports from 1970 to 1975. Based upon Bureau of Mines data, about 1 million barrels of imports are assumed to enter the United States through pipelines daily, and approximately 1 million barrels per day of domestic oil are assumed to be transported by means other than pipeline. These assumptions lead to the following projections of receipts if the bill became effective by the beginning of the next fiscal year:

[In millions of dollars]

Receipts:	
Fiscal year 1977	80
Fiscal year 1978	90
Fiscal year 1979	30
Fiscal year 1980	-----
Fiscal year 1981	-----

This pattern is explained by the $200 million limit on the fund. If the Secretary of Transportation decided that the fund limit need not be reached by early fiscal 1979, a fee of less than 3 cents per barrel could be charged, and the receipts would vary accordingly.

As mentioned in the cost estimate section, "such sums as necessary" are authorized to be appropriated to the Fund. If it were decided that the Fund should immediately be able to pay for damages from a significant oil spill, it is estimated that $20 million in budget authority be included for fiscal 1977. According to data submitted by the Department of Interior to the Subcommittee on Coast Guard and Navigation of the House Committee on Merchant Marine and Fisheries, this would exceed the costs of the Santa Barbara spill.

This bill would expose the Federal government to unlimited

contingent liabilities if a catastrophic or series of catastrophic oil spills generated damages in excess of the funds available in the Fund. The contingent liabilities are to be limited by provisions in appropriations acts. In any case, the probability of such an event appears to be remote.

6. Estimate Comparison: None.
7. Previous CBO Estimate: None.
8. Estimate prepared by William F. Hederman.
9. Estimate approved by ——— ———, for James L. Blum, Assistant Director for Budget Analysis.

(COMMITTEE COMMENT: This submission related to estimates on receipts by the fund differs substantially from the Committee estimates. Basically, the difference results from the fact that this submission assumes that all oil transported by pipeline is to be exempted from the fee. This assumption is incorrect.)

(D) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at, pursuant to clause 2(b)(2) of rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee has assessed the potential for inflationary impact and has concluded that such impact is minimal. The only impact involved would be from the fee collected from oil, at a rate not to exceed three cents per barrel. As heretofore estimated, the total of such fees would not exceed approximately $92,000,000 in fiscal year 1977, and $197,000,000 in fiscal year 1978, with collection in subsequent years dependent upon the necessity to replenish the fund. Some very minor impact could also flow from additional costs reflecting the establishment and maintenance of necessary financial responsibility, a cost which could be expected to be borne ultimately by the consumer of oil products.

DEPARTMENTAL REPORTS

H.R. 9294, a predecessor bill of H.R. 14862, was the subject of several reports. Copies of these reports follow herewith:

DEPARTMENT OF JUSTICE,
Washington, D.C., February 20, 1976.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 9294, a bill "To provide a comprehensive system of liability and compensation for oil spill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and for other purposes." As you will recall, the Department of Justice gave testimony on this bill before your Committee on September 29, 1975. The following comments are technical in nature and are intended to supplement our testimony.

H.R. 9294 would create a comprehensive system of oil spill liability and compensation by providing strict liability with limited defenses for those responsible for oil spills. This bill is structured in four Titles. Persons suffering injury from an oil pollution incident as a result of discharge of petroleum within navigable waters and adjacent high seas would be entitled to recover damages from a fund established under Title I of the bill, if unable to recover such damages from the discharger. Thus, the fund would pay compensation where the oil spill was from an undesignated source or where the source of discharge was a public vessel.

When the fund pays compensation to the injured party, it is subrogated to his cause of action against the owner, operator, or person financially responsible. Notably, vessels or ships covered by the bill would be required to maintain evidence of financial responsibility to the extent of their liability.

The compensation fund established under Title I of the bill is absolutely liable for removal costs, including cleanup, and strictly liable for other damages unless the injury was wholly caused by an act of war, hostilities, civil war or insurrection or where the gross negligence or willful misconduct of the claimant contributed to the injury. The compensation fund established under Title I of the bill is to be provisioned through a per barrel fee assessed against terminals and refineries as well as by certain civil and criminal penalties collected under other Federal statutes.

The damages which may be recovered against the fund and the discharger are costs of removal, including cleanup costs, as well as the value of injury to and loss of use of real property, personal property and natural resources. Also recoverable would be lost profits, impairment of earning capacity and loss of tax revenue for up to 1 year. Those claimants allowed to seek recovery for damages include not only private parties but also state and Federal agencies and, under certain circumstances, aliens suffering injury within the territorial sea or internal waters of the country where the alien claimant is resident.

H.R. 9294 would also implement two international Conventions, signed in 1969 and 1971, which provide remedies for oil pollution damage from ships. These Conventions provide remedies for United States citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts. Titles II and III would merge the provisions of the Conventions with the comprehensive system of liability and compensation otherwise established in Title I without altering the rights of claimants recognized under that Title. Thus, the bill establishes a right for claimants who could assert claims under the Conventions to proceed under Title I against the fund established by that Title. That fund can then go to court or take other necessary action against the owner under the Convention in order to recover. The claimant may proceed against the owner of the ship and the fund under procedures established in Title I or against the owner of the ship covered by the Conventions pursuant to the methods and procedures established in the Conventions as incorporated in Titles II and III. Notably, potential claimants who are not adequately protected under the terms of the Conventions are adequately protected under Title I. Thus, if they are unable to obtain full recovery for their injuries under Titles II and III, they may seek additional recovery.

Finally, Title IV would amend existing laws affected by the establishment of the proposed system.

Section 108(a)(2) provides:

> (2) In addition to any action or claim brought under this title, any claim for costs incurred by any vessel or ship subject to this subsection asserted under subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act may be brought or presented directly against an insurer or any other person producing evidence of financial responsibility as required under this subsection. In the case of any action taken pursuant to subsections (f) and (g) of section 311 of the Federal Water Pollution Control Act the insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

The purpose of this provision is to ensure that the evidence of financial responsibility required under the bill will also serve to satisfy the requirement for evidence of financial responsibility under the Federal Water Pollution Control Act as that requirement relates to hazardous substances. In order to avoid ambiguity regarding the purpose of this provision, we suggest substituting the phrase "resulting from an unlawful discharge" for the word "incurred" on line 19 of page 19. In addition, it would seem that the word "producing" in line 23 of page 19 should be "providing."

Section 110(g)(1) provides that:

> The Secretary shall establish uniform procedures and standards for the appraisal and settlement of claims against the fund.

Claims resulting from a discharge caused by an act of God or by a public vessel or an undesignated source or claims in excess of the limitation of liability of the discharger are all claims for which the fund is initially liable but the discharger is not. The fund is also liable for claims against the discharger where the discharger refuses to settle and the claimant decides to bring the claim to the fund rather than go to court. The purpose of this provision was the establishment of uniform procedures and standards for all claims for which the fund has liability. However, the reference in section 110(g)(1) to claims "against the fund might be construed narrowly to apply only to those claims for which the fund is initially liable. To avoid this construction we suggest that the phrase "presented to" be substituted for the word "against" in line 21 of page 27.

Section 110(1)(4) provides:

> (4) A hearing conducted under this subsection shall be conducted within the United States judicial district within which the damage complained of occurred, or, if the damage complained of occurred within two or more districts, in any of the affected districts.

This section does not provide venue for a hearing regarding damages which may occur on the high seas beyond any judicial district of the

United States. Since such damages are recoverable under the bill, we suggest amending the subsection by inserting "or if the damage occurred outside a district, the nearest district," after "districts," line 18, page 30.

Subsection 110(i)(5) provides for review by the Secretary of the decision of the administrative law judge or panel while subsection 110 (i)(6) provides for review by the district courts of final orders of the Secretary. Neither subsection specifically provides time limits within which the respective review processes must begin. It is intended that the Secretary will establish such limits for review of the decision of the administrative law judge or panel under the authority provided in subsection 110(i)(5). The Federal Rules of Civil Procedure would establish a 6-year statute of limitation for bringing actions to review final orders of the Secretary by the district courts. 28 U.S.C. 2401(a).

A typographical error appears in the reference in line 13, page 31, to "section 15." Apparently, section 105 is intended. In addition, it would seem that a comma has been omitted between "the Secretary" and "the Attorney," line 9, page 31.

Section 111(c) establishes the liability of an owner, operator or person providing financial responsibility to the fund for interest on amounts which the fund has compensated claimants whose claims were not settled by that owner, operator or person providing financial responsibility. We have difficulty determining the amount of that interest as provided for under subsection 111(c)(a)(B). The Administration is preparing language which will clarify this provision.

The Department of Justice recommends enactment of this legislation amended as suggested above.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administrations program.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., November 20, 1975.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MADAM CHAIRMAN: Reference is made to your letter of August 7, 1975, requesting our comments on H.R. 9294, 94th Congress, which if enacted would be cited as the "Comprehensive Oil Pollution Liability and Compensation Act of 1975." The bill would provide for a comprehensive system of liability and compensation for oilspill damage in U.S. waters and to U.S. coastlines, and would implement two international conventions regulating compensation for oil pollution damage caused by tankers on the high seas. The bill was introduced at the request of the President, pursuant to his message to the Congress of July 9, 1975 (House Document No. 94–214).

The bill would simplify Federal administration of oilspill compensation by providing that claims for damages by oilspills would be financed from one fund. At present, there are two separate funds for

this purpose, provided under the Trans-Alaska Pipeline Authorization Act, Pub. L. No. 93–153, Act of November 16, 1973, and the Deepwater Port Act of 1974, Pub. L. No. 93–627, Act of January 3, 1975. Further, as the President stated in his message of July 9, 1975, the bill would establish a uniform system of settling claims and assure that none will go uncompensated, even in cases where it is impossible to identify the source of the spill.

The bill would supersede existing provisions of strict liability under title II of the Trans-Alaska Pipeline Authorization Act, and the Deepwater Port Act of 1974, *supra*. It would also assign administrative responsibility for the liability fund to the Secretary of Transportation and the Secretary of the Treasury. The Trans-Alaska Pipeline Liability Fund is presently administered by the holders of the right-of-way under regulations prescribed by the Secretary of the Interior, and the Deepwater Port Liability Fund is administered by the Secretary of Transportation.

H.R. 9294 presumably is intended to take the place of provisions for strict liability for oilspill damage caused by Outer Continental Shelf operations which are included in various proposed bills now pending before your committee, such as H.R. 3638 and S. 521 which was passed by the Senate on July 30, 1975. As now drafted, section 102(b)(3) of H.R. 9294 would require collection of a fee not to exceed 3 cents per barrel of oil *received* at a refinery or terminal. H.R. 3638 would require (page 5, line 20) collection of a fee of 10 cents per barrel of oil *produced* at any site leased on the Outer Continental Shelf, while S. 521 would require (page 67, line 22) collection of a fee of 2½ cents per barrel of oil *produced* pursuant to any lease on the Outer Continental Shelf (OCS). The Committee may wish to determine which of the proposed methods of collecting fees would be the most reasonable and practicable with respect to oil produced on the OCS.

H.R. 9294 would supplement the provisions of the Federal Water Pollution Control Act Amendments of 1972 regulating the removal of oil or hazardous substances from navigable waters of the United States (section 311 of Pub. L. No. 92–500, approved October 18, 1972). However, there is a considerable overlap between the proposed and the existing provisions which might result in complexities of administration. For example, the relationship between the liability fund to be established under H.R. 9294 and the revolving fund established under section 311(k) of the Water Pollution Control Act is not entirely clear. Section 102(b)(1) of H.R. 9294 provides that penalties collected under section 311(b) of the Federal Water Pollution Control Act be deposited into the fund established by H.R. 9294. On the other hand, section 406(c)(6) of H.R. 9294 would amend section 311(k) of the Water Pollution Control Act to provide that certain penalties collected under section 108(a)(3) of H.R. 9294 be deposited into the revolving fund established under section 311(k). We suggest that the Committee consider consolidating the respective provisions for oilspill liability in one law and thus simplify administration by the Federal Government.

The extent of liability of the fund established under section 102 in relation to the liability of owners and operators of vessels, onshore facilities, or offshore facilities is equally unclear. Section 106 provides that the fund shall be liable for all damages specified in section 103,

while section 105 provides also for strict owner/operator liability for all damages specified in section 103. Owner/operator liability would be limited to $20 million in the case of a ship and to $50 million in the case of an onshore or offshore facility. The bill, however, does not specify whether the fund would be jointly liable with owner/operators, or would be liable only for any damages in excess of those paid by the responsible owner/operator.

Section 102(b)(5) provides that the Secretary of the Treasury may modify by regulation the amount of fees to be collected so as to maintain the fund at a level not to exceed $200 million. However, the bill does not specify the amount of maximum liability of the fund or whether $200 million is the limit of the fund's liability. We suggest that the bill specifically state the extent of the fund's liability along the lines of either Pub. L. No. 93–153 or Pub. L. No. 93–627:

> Pub. L. No. 93–153 provides in section 204(c)(3) that the owner and operator of the vessel shall be jointly and severally liable for the first $14 million of any claims arising out of any claims that may be allowed, and that the Trans-Alaska Pipeline Liability Fund shall be liable for the balance of the claims that are allowed up to $100 million. If the total claims allowed exceed $100 million, they shall be reduced proportionately.
>
> Pub. L. No. 93–627 provides in section 18(f)(2) that the Deepwater Port Liability Fund shall be liable for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of that section. Subsection (d) limits the liability of an owner/operator of a vessel to $20 million and subsection (e) limits the liability of a licensee of a deepwater port to $50 million. Pub. L. No. 93–627 does not limit the amount of the Fund's liability.

Section 102(b)(5) also provides that in maintaining the liability fund at a level not to exceed $200 million, the fee modifications made shall become effective no earlier than the ninetieth day following the date the modifying regulation is published in the Federal Register. This means that fees could be collected from owners of refineries and terminals only to the extent necessary to reach $200 million and that collections would have to cease at that point, only to be reinstated when the fund dropped below $200 million. This arrangement might be difficult to administer and could result in unequal treatment of owners of refineries and terminals, although they all would contribute to the hazards of oilspills and be subject to the same strict liability rules. We believe a more equitable and simpler arrangement would be to levy the fee on all oil operations regardless of the balance accumulating in the fund and to hold any excess above the ceiling as a reserve for future liability payments. This would be more in keeping with managing the fund similar to an insurance trust fund and, if the Secretary of the Treasury adjusted fees on the basis of actuarial estimates of the risk involved, could result in eliminating the need for the fund to borrow from the Treasury to meet its obligations.

The bill would impose sections (105 and 106) no liability on owner/operators or on the fund if an oilspill were caused by an act of war,

hostilities, civil war, or insurrection. Also, an act of God would preclude the strict liability of an owner/operator. We note that Pub. L. Nos. 92–500, 93–153, and 93–627 also preclude strict liability in the event of negligence on the part of the United States. In particular, Pub. L. No. 93–627 precludes strict liability of an owner/operator if there is negligence on the part of the Federal Government in establishing and maintaining aids to navigation. The Committee may wish to include in H.R. 9294 a similar exception to strict liability in the event of negligence by the United States.

Section 102(a) provides for paying the costs of administering the liability program from moneys in the fund. However, the bill provides no congressional control over the amount of such costs. We suggest that the bill be amended to require annual limitations on the fund's administrative expenses to be established in annual appropriations acts.

Section 102(e) authorizes the Secretary of Transportation, when necessary, to issue notes or other obligations to the Secretary of the Treasury. The Secretary of the Treasury would have to purchase these obligations and would be authorized to sell them. Treasury redemptions, purchases, and sales of the obligations would be treated as public debt transactions of the United States. We believe that, instead of this administratively expensive procedure, the fund should be authorized to borrow funds from the Treasury as needed. We believe that the fund's borrowing authority should be subject to congressional control also, and suggest that the bill be amended to establish a maximum amount which the fund can borrow.

Enclosed are several suggested technical and editorial changes to the bill.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General.

Enclosure.

SUGGESTED TECHNICAL AND EDITORIAL CHANGES TO H.R. 9294

(1) In subsection 406(c)(2) the word "after" should be inserted between "adding" and "the" on line 25, page 70.

(2) The first two sentences of subsection 406(d)(1) on lines 9–12, page 73, amending the Deepwater Port Act of 1974 should read as follows:

> Subsections (b), (d), (e), (f), (g), (h), (i), (k), (l), (n), and clause (1) of subsection (m) are deleted. Subsections (c), (j), and (m) are redesignated (b), (c), and (d), respectively.

The third sentence is correct as now stated.

(3) The reference in section 18(c)(3) of the Deepwater Port Act—which would be redesignated as section 18(b)(3) by subsection 406(d)(1)—to the fund established pursuant to subsection (f) would no longer be pertinent since subsection (f) would be deleted. The reference should be to the fund established pursuant to section 102 of H.R. 9294.

Washington, D.C., October 17, 1975.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your letter of August 7, requesting the Department of State's view on H.R. 9294, a bill "to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Fund for Compensation for Oil Pollution Damage, and other purposes."

Title I of H.R. 9294 creates a comprehensive liability and compensation regime for domestic discharges causing oil pollution damage. Title II would implement the 1969 International Civil Liability and related 1971 International Fund Conventions, should the Senate advise and consent to ratification of those Conventions. Under the bill, each of these two systems—the domestic and the international—will provide a source of liability and compensation for particular oil discharges.

We believe that this is a sound approach. For the United States, most oil pollution damages result from sources falling within the jurisdiction of the United States. Title I of H.R. 9294 will cover these. There may also be some damage resulting from discharges from non-U.S. vessels which cannot be brought under the jurisdiction of the U.S. courts, except pursuant to the 1969 and 1971 Conventions. Title II provides the mechanism to implement the Conventions in these cases. Finally, the remedies under Title I would be available to supplement the Conventions in cases where they might not provide a completely adequate remedy for U.S. claimants.

H.R. 9294 establishes domestic procedures, and implements international procedures, which provide a coherent and comprehensive system to assure compensation for oil pollution damages. We strongly support this legislation.

The Office of Management and Budget advises that from the standpoint of the Administration, there is no objection to the submission of this report.

Sincerely,

ROBERT J. MCCLOSKEY,
Assistant Secretary for Congressional Relations.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., December 29, 1975.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for the views of this Department with respect to a bill, H.R. 9294, "To provide a comprehensive system of liability and compensation for oilspill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International

Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage and for other puropses."

We support enactment of the bill which is an Administration proposal.

The bill was developed through extensive study, drafting, and review, over a period covering many months, by an inter-agency effort initiated by the Council on Environmental Quality. The bill was proposed by the President in a letter to the Congress on July 9, 1975, in which the President stated:

"I consider this legislation to be of high national importance as we seek to meet our energy needs in an environmentally sound manner."

The bill is an important aspect of our effort to accelerate development of our offshore oil and gas resources. These rssources are vitally needed in the Nation's struggle to reduce its dependence on foreign oil and to meet domestic energy needs. If we are to increase, or even maintain, the present rate of domestic production, we must do so through orderly development of the OCS. Significant deterrents to this development are presented by current and threatened litigation, uncertainty in the laws with respect to recoverable damages and prospective claimants, and the confusion arising from the multiplicity of State, Federal, and local laws which might be applied to oil spill situations.

Perhaps the most important of the many benefits of this legislation is that it would replace a patchwork of overlapping and sometimes conflicting Federal and State laws. It would pre-empt State laws and would apply a uniform nationwide system of compensation and liability for oil spill damages. It would specify and define liability, recoverable damages, and potential claimants.

Pre-emption is essential to the effectiveness of the proposed law and the compensation scheme provided in it. Without pre-emption, we perpetuate the existing profusion of applicable laws and lose the uniformity, predictability, assurance of recovery and speedy compensation to injured parties, which are the major benefits of the bill.

From the point of view of this Department, the bill has great significance for the program of oil and gas development on the Outer Continental Shelf, which we manage, because it would help remove impediments to orderly development raised by legal uncertainties and by the threat of litigation.

The bill is a generous bill that provides more recovery to more people than most State laws would provide, and with greater speed and efficiency. The bill is generous in its liability ceilings, in its provision of a large alternative fund, in its imposition of strict liability rather than negligence as a basis for responsibility, in the kinds of damages that are recoverable, in its assurance that virtually no damages or claimants would go uncompensated, and in providing an efficient means for payment whereby claimants could avoid the costs, hassles, and delays of litigation.

This legislation would help protect our environment and innocent victims of oil spills by establishing strict liability for all oil pollution damages from identifiable sources and providing strong economic incentives for operators to prevent spills. Equally important, the bill will provide relief for many oil-related environmental damages which in the past went uncompensated. For example, State and local govern-

ments will be able to claim compensation for damages to natural resources under their jurisdiction.

Limits of liability of up to $20 million would be placed on vessels and ships, and up to $50 million against onshore and offshore facilities. Evidence of financial responsibility would be required of many vessels and ships as a condition of doing business. (By way of measurement, note that in the Meade-Sorenson study of the "Cost to Society" of the Santa Barbara spill, including damage to property, business, and recreational opportunity, total damages were assessed at $16.4 million.)

The legislation provides for an Oil Spill Liability Fund of up to $200 million to be derived principally from penalties and fines and from a small fee on oil. This fund, to be administered by the Treasury Department, would provide a basis from which claims can be paid. Recovery against the fund would be an additional or alternative source of recovery as opposed to recovery against owners and operators and would protect those suffering damage from unidentifiable sources or from owners and operators having insufficient funds or whose liability limits were exceeded.

This legislation would also implement two international conventions—signed in 1969 and 1971—which provide remedies for oil pollution damage from ships. These conventions provide remedies for U.S. citizens under many circumstances where a ship discharging oil that reaches our shores might not otherwise be subject to our laws and courts.

While it appears unlikely that there will be many major oil spills, the catastrophic impact upon the area affected by such a spill can be of great importance. Overall, pollution from spillage of oil from production platforms or from marine disasters, such as the Santa Barbara and *Torrey Canyon* disaster, while spectacular, are relatively small in comparison with the total amounts of oil which reach the marine environment.

Since the Santa Barbara spill we have taken many steps to make sure that the likelihood of such a disaster occurring again is as close to zero as we can make it. We have increased inspections and inspection staffs. We have made numerous changes in safety requirements for activities conducted on leases. These and other steps have been effective. Since the Santa Barbara incident more than 5,200 wells have been drilled on the OCS, more than 2,000 offshore production platforms have been constructed, and approximately 2.5 billion barrels of oil have been produced. With this activity, there have been only eight oil spills from OCS production and drilling that would be classed as major spills (over 2,300 barrels).

We in the Interior are doing all we can to minimize the occurrence of oil spills resulting from production operations on the OCS, and industry has a substantial interest in doing the same—in fact the number of spills has been low. But there will always remain the danger that there will be some spills.

We believe that H.R. 9294 will help protect our environment and those innocent victims suffering damage from oil spills, and will provide an effective, comprehensive, and uniform system of protection that best meets public needs in this regard.

For these reasons, and because the Nation's need for OCS oil and gas is so great, the Department of the Interior urges enactment of H.R. 9294 into law.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROYSTON C. HUGHES,
Assistant Secretary of the Interior.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., July 30, 1976.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 9294, "To provide a comprehensive system of liability and compensation for oilspill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and for other purposes."

This proposed legislation would establish a comprehensive and uniform system for fixing liability and settling claims for oil and oil pollution damages in United States waters and coastlines. The proposal would also implement two international conventions dealing with oil pollution caused by tankers on the high seas. H.R. 9294 is the Administration-sponsored bill on oil pollution liability and compensation. As President Ford said in his message to Congress transmitting this bill on July 9, 1975, this legislation would be of great significance in our national effort to maximize our energy resources while maintaining to the greatest extent the quality and integrity of the environment.

If enacted, H.R. 9294 would provide specific damages for broad classes of claimants who have been injured by ships and vessels discharging oil and by related oil-pollution damages. Vessels, ships, and other facilities subject to the proposed act would be under strict liability of varying limitations for oil spills and related actions; however, liability would be unlimited where gross negligence or willful misconduct is present. If the injury occurs during a war or insurrection, or when an act of God takes place, these limited defenses would be available to the offending party.

H.R. 9294 would create a fund in the Treasury for payment of oil spill claims, and would require the Secretary of Transportation to establish standard procedures for the appraisal and settlement of claims against the fund. A claimant, under the proposed Act, would have the option of suing the dischargers in U.S. District Court or filing a claim against the fund. In the latter case, the fund would be subrogated to the rights of the claimant against all parties found liable.

This legislation would also implement two international conventions, concluded in Brussels in 1969 and 1971, which provide remedies for oil pollution damages. H.R. 9294 would repeal existing Federal pollution funds and liability statutes, and would preempt State law in the area

covered by the Act, thus creating a single comprehensive nationwide system of liability and compensation.

In view of the above, the Department would strongly recommend the enactment of H.R. 9294.

The Department has been advised by the Office of Management and Budget that there is no objection to the submission of this report to your Committee and that the enactment of the proposed legislation would be in accord with the Administration's program.

Sincerely yours,

RICHARD R. ALBRECHT,
General Counsel.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., March 19, 1976.

Hon. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your request for comment on H.R. 9294, a bill "To provide a comprehensive system of liability and compensation for oil spill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and for other purposes," has been assigned to this Department by the Secretary of Defense for the preparation of a report expressing the views of the Department of Defense.

As indicated in its title, the purpose of the bill is to provide for a comprehensive federal system of liability and compensation for damage arising from marine oilspills. H.R. 9294 will also implement two international conventions dealing with oil pollution damage.

The Department of the Navy has, for some time, recognized a responsibility to institute extensive preventive and clean-up procedures and has dedicated considerable Department of Defense resources to the procurement of safe petroleum transfer, storage, and spill clean-up equipment. Accordingly, the Department of the Navy on behalf of the Department of Defense, supports the broad objectives of H.R. 9294.

It is expected that the enactment of the bill will result in some additional costs to the Department of Defense, although there is no experience upon which to base an estimate of the extent of these costs. They are expected to arise from the change from a negligence standard to one of strict liability.

This report has been coordinated within the Department of Defense in accordance with the procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report to the Committee.

For the Secretary of the Navy.

Sincerely yours,

T. F. HAIRSTON,
Captain, JAGC, U.S. Navy,
Director, Legislation.

EXECUTIVE OFFICE OF THE PRESIDENT,
COUNCIL ON ENVIRONMENTAL QUALITY,
Washington, D.C., October 15, 1976.

Mrs. JOHN B. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: Thank you for your letter of August 7, 1975 inviting the Council on Environmental Quality to comment on H.R. 9294, a bill to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, to implement the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and for other purposes.

This proposed legislation was submitted by the President and is fully supported by the Council on Environmental Quality. We will be pleased to work with you on this proposal, and urge that you give it priority consideration.

Sincerely,

RUSSELL W. PETERSON,
Chairman.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 204 of the Trans-Alaska Pipeline Authorization Act (87 Stat. 586)

SEC. 204. (a)(1) Except when the holder of the pipeline right-of-way granted pursuant to this title can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to $50,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of $50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negli-

gence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

(5) Where the State of Alaska is the holder of a right-of-way or permit under this title, the State shall not be subject to the provisions of subsection 204(a), but the holder of the permit or right-of-way for the trans-Alaskan pipeline shall be subject to that subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) If any area *in the State of Alaska* within or without the right-of-way or permit area granted under this title is polluted by any activities *related to the Trans-Alaska Oil Pipeline* conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder. *This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 101(m) of the Comprehensive Oil Pollution Liability and Compensation Act of 1976.*

[(c) (1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

[(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

[(3) Strict liability for all claims arising out of any one incident shall not exceed $100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first $14,000,000 of such claims that are allowed. Financial responsibility for $14,000,000 shall be demonstrated in accordance with the provisions of section 311(p)

of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)) before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to $100,000,000. If the total claims allowed exceed $100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

[(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

[(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when $100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below $100,000,000.

[(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

[(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

[(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be, shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

[(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

[(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

[(11) For purposes of this subsection only, the term "affiliate" includes—

[(A) Any person owned or effectively controlled by the vessel owner or operator; or

[(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

[(i) stock interest, or

[(ii) representation on a board of directors or similar body, or

[(iii) contract or other agreement with other stockholders, or

[(iv) otherwise; or

[(C) Any person which is under common ownership or control with the vessel owner or operator.

[(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.]

Section 17 of the Intervention on the High Seas Act (88 Stat. 10)

[SEC. 17. The revolving fund established under section 311(k) of the Federal Water Pollution Control Act shall be available to the Secretary for Federal actions and activities under section 5 of this Act.]

Sec. 17. The fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976 shall be available to the Secretary for actions and activities taken under section 5 of this Act.

Section 311 of the Federal Water Pollution Control Act, as Amended

(86 Stat. 862; 33 U.S.C. 1321)

SEC. 311. (a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore

facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this [section.] *section;*

(15) "person in charge" means the individual having immediate operational responsibility.

(b)(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance can actually be removed.

(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged during the two-year period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and dispersal characteristics of such substance, in an

amount not to exceed $50,000, except that where the United States can show that such discharge was a result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability, and dispersal characteristics of such substance.

(iii) After the expiration of the two-year period referred to in clause (ii) of this subparagraph, the owner or operator of any vessel, onshore facility, or offshore facility, from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided in subsection (f) of this section, to the United States for either one or the other of the following penalties, the determination of which shall be in the discretion of the Administrator:

(aa) a penalty in such amount as the Administrator shall establish, based on the toxicity, degradability, and dispersal characteristics of the substance, but not less than $500 nor more than $5,000; or

(bb) a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than $5,000,000 in the case of a discharge from a vessel and $500,000 in the case of a discharge from an onshore or offshore facility.

(iv) The Administrator shall establish by regulation, for each hazardous substance designated under subparagraph (A) of this paragraph, and within 180 days of the date of such designation, a unit of measurement based upon the usual trade practice and, for the purpose of determining the penalty under clause (iii)(bb) of this subparagraph, shall establish for each such unit a fixed monetary amount which shall be not less than $100 nor more than $1,000 per unit. He shall establish such fixed amount based on the toxicity, degradability, and dispersal characteristics of the substance.

(3) The discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation, to be issued as soon as possible after the date of enactment of this paragraph, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches except that in

the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(c)(1) Whenever any oil or a hazardous substance is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous [zone,] *zone or from an artificial island or fixed structure operating under authority of the Outer Continental Shelf Lands Act*, the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, *artificial island or fixed structure*, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous

substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemicals, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section *or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976 as appropriate*, for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including,

but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection [shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.] *shall be reimbursed from the fund established under subsection (k) of this section or the fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976, as appropriate. Any expense incurred thereunder for which reimbursement may be had from the fund established under subsection (k) of this section shall be recoverable from the owner or operator of the vessel in accordance with subsection (f) of this section.*

(e) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f)(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil (*other thn petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(2) of this section shall, not withstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or substance by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000, whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner

or operator of such [vessel] *vessel, or against the person furnishing financial responsibility under section 105 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976* in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(2) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Secretary is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(2) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an off-shore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not neglected, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(2) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(g) In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(2) of this section, proves that such discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) of substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(2) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case, the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance in violation of subsection (b)(2) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party *or against the person providing financial responsibility for that party under such section 105 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976* in any court of competent jurisdiction to recover such removal costs.

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance.

(i)(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or a hazardous substance is discharged in violation of subsection (b)(2) of this section acts to remove such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or substance in accordance with regu-

lations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).

(j)(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determiniing the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

[(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.]

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (i) and (l) of this

section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fraction or residue therefrom) and hazardous substances. Any other funds received by the United States under this section respecting such discharges shall also be deposited in this fund for these purposes. All sum appropriated to, or deposited in, the fund shall remain available until expended.

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this [section.] *section respecting discharges or imminent discharges of oil (other than petroleum, crude oil, or any fractions or residue therefrom).* Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(l), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o)(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance or from the removal of any such oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil (*other than petroleum, crude oil, or any fraction or residue therefrom*) or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency,

or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p)(1) [Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel.] *Any non-self-propelled barge over three hundred gross tons that carries oil (other than petroleum, crude oil, or any fractions or residue therefrom) or hazardous substance as cargo or fuel*, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser, to meet the liability to the United States which such [vessel] *barge* could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such [vessel,] *barge*, financial responsibility need only be established to meet the maximum liability to which the largest of such [vessels] *barges* could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

(3) Any claim for costs incurred by such [vessel] *barge* may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a [vessel] *barge* subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any [vessel] *barge* subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United

States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any [vessel] *barge* subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

Deepwater Port Act of 1974

(P.L. 93-627; 88 Stat. 2126)

* * * * * * *

SEC. 4. * * *

(c) The Secretary may issue a license in accordance with the provisions of this Act if—

(1) he determines that the applicant is financially responsible and will meet the requirements of [section 18(1) of this Act;] *section 105 of the "Comprehensive Oil Pollution Liability and Compensation Act of 1976";*

* * * * * * *

SEC. 18. * * *

[(b) Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.]

[(c)](*b*) (1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 311(c)(2) of the Federal Water Pollution Control Act, as amended.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the [Deepwater Port Liability Fund established pursuant to subsection (f) of this section] *fund established under section 102 of the Comprehensive Oil Pollution Liability and Compensation Act of 1976.* Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

[(d) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

[(e) Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

[(f)(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund"), as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

[(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

[(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

[(g) Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing

and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

[(h)(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

[(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

[(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

[(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

[(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

[(i)(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

[(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

[(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural

resources by the appropriate agencies of Federal or State government.

[(j)(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this Act.

[(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

[(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

[(k)(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.]

(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act of 1976, for any discharge of oil from a deepwater port or a vessel within any safety zone.

[(l) the Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.]

[(m)] *(d)* As used in this section the term—

[(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;]

[(2)] *(1)* "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

[(3)] *(2)* "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

[(4)] *(3)* "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

[(n)(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Adminis-

trator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

[(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after the date of enactment of this Act.]

○